

MEMORANDUM

TO: Governing Board Members

FROM: Sharon M. Trost, P.G., AICP, Director, Regulation Division

DATE: September 13, 2011

SUBJECT: Adopt amendments to Rules 40E- 40E-1.5095, 40E-1.603, 40E-1.6058, 40E-1.607, 40E-1.615, 40E-1.659, 40E-4.011, 40E-4.021, 40E-4.041, 40E-4.0415, 40E-4.042, 40E-4.051, 40E-4.091, 40E-4.101, 40E-4.201, 40E-4.301, 40E-4.302, 40E-4.303, 40E-4.305, 40E-4.321, 40E-4.331, 40E-4.361, 40E-4.381, 40E-40.010, 40E-40.011, 40E-40.031, 40E-40.041, 40E-40.042, 40E-40.051, 40E-40.141, 40E-40.302, 40E-40.321, 40E-40.331, 40E-40.341, 40E-40.381, 40E-40.391, 40E-41.121, 40E-41.243, 40E-41.260, 40E-41.263, 40E-41.265, 40E-41.363, 40E-400.211, 40E-400.417, 40E-400.443, 40E-400.447, 40E-400.470, 40E-400.475, 40E-400.487, 40E-400.500, F.A.C., and Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, to “clean up” the District’s rules and update the rules to be consistent with statutory amendments, incorporate forms in the appropriate rules, include hyperlinks to forms and materials incorporated by reference, and amend forms to update titles and organizational structure, update addresses for service centers, and include incorporation language.

Background:

The District reviewed its environmental resource permitting rules in accordance with Section 120.74, F.S., which requires agencies to perform a formal review every two years to identify and correct deficiencies in its rules; clarify and simplify its rules; delete obsolete or unnecessary rules; delete rules that are redundant of statutes; seek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector; contact agencies that have concurrent or overlapping jurisdiction to determine whether their rules can be coordinated to promote efficiency, reduce paperwork, or decrease costs to government and the private sector; and determine whether the rules should be continued without change or should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.

As a result, the District identified a number of rules in need of correction, modification, or updating pursuant to the requirements of Section 120.74, F.S. These proposed amendments primarily make minor changes to “clean up” the District’s rules and update the rules to be consistent with statutory amendments, incorporate forms in the appropriate rules, include hyperlinks to forms and materials incorporated by reference, and make non-substantive changes to the forms. With the exception of the “Basis of

Governing Board Members
September 13, 2011
Page 2

Review for Environmental Resource Permit Applications within the South Florida Water Management District” (BOR), the materials incorporated by reference are not proposed for amendment; the rule text incorporating the materials is proposed for amendment.

This rule review commenced in 2009, rule development notices were published in 2010, and the adoption was scheduled for January 2011. However, the District postponed its rule adoption hearing after receiving Executive Order 11-01. Therefore, these changes are not outdated by the rule review completed pursuant to Executive Order 11-01 or subsequent Executive Order 11-72. That rule review will result in a separate rulemaking effort.

In accordance with Section 120.541, F.S., the District also prepared a Statement of Estimated Regulatory Cost (SERC), and has anticipated that “the proposed rule revision will have no economic affect on small businesses and small cities.” It is further anticipated that users of the District’s 40E administrative rules will benefit from the use of more accurate and up-to-date rules.

The District submitted the proposed rules to the Office of Fiscal Accountability and Regulatory Reform (OFARR) on July 25, 2011. Comments were received from OFARR and the District responded to OFARR comments orally and in writing. No additional comments were received from OFARR.

Recommendation

Adopt amendments to the subject rules to correct, modify, and update the District’s environmental resource permitting rules pursuant to the requirements of Section 120.74, F.S

Staff Contact: Anita R. Bain, Bureau Chief, Environmental Resource Permitting; Phone (561) 682-6866

**Susan Martin, Sr. Specialist Attorney, Office of Counsel
Phone (561) 682-6251**

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-1.5095 Publication of Notice of Agency Decision or Intended Agency Decision.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 120.54(5), 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 120.54(5), 120.569, 120.57, 373.146, 373.413, 668.003, 668.004, 668.50 FS. History—New 7-2-98, Amended 6-12-00, 10-1-06, Repealed 12-1-11.

40E-1.603 Application Procedures for Conceptual Approval, Individual and Standard General Permits.

(1) No Change.

(a) No Change.

(b) If the District determines that the application is incomplete, the District shall request the information needed to complete the application within 30 days of its receipt. For individual permits and standard ~~general~~ permits, the applicant shall have 90 days from receipt of a timely request for additional information to submit that information to the District.

(c) through (e) No Change.

(2) No Change.

(3)(a) No Change.

(b) An authorization to proceed for standard ~~general~~ permits in Chapter 40E-20, F.A.C., shall occur within 60 days of receipt of a complete notice of intent, including receipt of all requested information and correction of any error or omission of which the applicant was timely notified.

(c) Agency action on a standard ~~general~~ permit application in Chapter 40E-40, F.A.C., shall occur within 60 days of receipt of a complete application, including receipt of all requested information and correction of any error or omission of which the applicant was timely notified.

(d) through (e) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 120.53(1), 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 120.60, 373.107, 373.109, 373.116, 373.229, 373.417, 373.421, 373.422, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Formerly 16K-1.08(1)-(8), Amended 7-1-86, 7-26-87, 11-21-89, 5-11-93, 10-3-95, 4-1-96, 7-2-98, 6-12-00, 10-1-06, 12-1-11.

40E-1.6058 Publication and Requests for Notification of Permit Applications or Notices of Intent.

(1) No Change.

(2) No Change.

(a) No Change.

(b) Within 14 days of filing notice of intent to use a general permit or application for a ~~standard~~ general permit, persons qualifying for the use thereof are not required to, but may publish notice of such filing in a newspaper of general circulation, as defined in Chapter 50, F.S., in the area affected by the proposed project. Proof of publication shall be submitted to the District within 14 days of publication.

(c) No Change.

(3) through (5) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented

120.53(1), 120.60(3), 668.003, 668.004, 668.50 FS. History—New 10-3-95, Amended 7-2-98, 6-12-00, 10-1-06, 12-1-11.

40E-1.607 Permit Application Processing Fees.

(1) through (2) No Change.

(3)(a) Environmental Resource Permit Application processing fees are in the following table:

TABLE 40E-1.607(3)(a)

PERMIT APPLICATION PROCESSING FEES FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS REVIEWED PURSUANT TO CHAPTERS 40E-4, 40E-40, AND 40E-400, F.A.C.

Fee amounts shall apply to applications for conceptual and construction, or conceptual, or construction, except as noted.

Category	Amount
New Individual Permit	
Project area less than 100 acres	
Agriculture	\$4,029
All others, including Mitigation Banks	\$7,500
Project area 100 acres to less than 640 acres	
Agriculture	\$5,284
All others, including Mitigation Banks	\$13,125
Project area 640 acres or more	
Agriculture	\$6,605
All others, including Mitigation Banks	\$25,000
Individual Permit Modification	
Project area less than 100 acres	
Agriculture	\$2,708
All others, including Mitigation Banks	\$5,000
Project area 100 acres to less than 640 acres	
Agriculture	\$3,303
All others, including Mitigation Banks	\$10,000
Project area 640 acres or more	
Agriculture	\$4,624
All others, including Mitigation Banks	\$15,000
New Standard General Permit (excluding incidental site activities pursuant to Rule 40E-40.042, F.A.C.)	
Agriculture	\$859
All others	\$3,500
Standard General Permit Modification including	
Application for phase construction under a Conceptual Approval	
Application for individual permit modification for a system which does not exceed the criteria in Rule 40E-40.041, F.A.C. and which is not required to obtain an individual environmental resource permit for the reasons in subsection 40E-40.011(2), F.A.C.	

Agriculture	\$661
All others	\$1,500
Noticed General Permit pursuant to Chapter 40E-400, F.A.C., including	
Aquaculture	\$250
Single family residential homesite consisting of 10 acres or less in total land area	\$100
Standard General Permit for incidental site activities pursuant to Rule 40E-40.042, F.A.C. (Early Work)	\$1,000
Transfer of permit (including Mitigation Bank) to another entity pursuant to Rules 40E-1.6107 and 40E-4.351, F.A.C.	\$675
Variance associated with an environmental resource permit application	
From paragraph 40E-4.301(1)(e), F.A.C.	\$750
From other permitting standards, permit conditions, or water quality standards	\$1,500
New Individual Operation Permit	\$5,250
Letter Modification	\$250
New Individual or Standard General Permits, or Individual or Standard General Permit Modifications, solely for environmental restoration or enhancement activities provided such activities are not associated with a mitigation bank and are not being implemented as mitigation for other activities that require a permit under Part IV of Chapter 373, F.S. Such activities may include incidental passive recreation and facilities to provide public access to the environmental restoration or enhancement site	\$250
No Notice General Permits pursuant to Rules 40E-400.315 and 40E-400.316, F.A.C.	\$100
Verification that an activity is exempt from regulation under Part IV, Chapter 373 or 403.813, F.S.	\$100
Informal wetland boundary determinations under Part IV of Chapter 373, F.S., for property less than	\$500
or equal to 1 acre	\$500

Permit Extensions

1. When used in Table paragraph 40E-1.607(3)(a), F.A.C., “Agriculture” shall be defined as set forth in Section 570.02, F.S.

2. For permit applications which involve a combination of fee categories, the highest fee that applies shall be charged.

3. Any individual permit application submitted concurrently with a conceptual approval application – where the individual permit application represents a phase of the conceptual approval application – is exempt from the above environmental resource permit fees.

4. For projects grandfathered pursuant to Section 373.414, F.S., the letter modification, conceptual approval, individual or general surface water management permit application fee shall be the same as listed in Table paragraph 40E-1.607(3)(a), F.A.C.

5. The District shall use the Consumer Price Index (CPI) adopted by the United States Department of Labor since the most recently revised fee increase for revising fees under Part IV of Chapter 373, F.S., pursuant to Section 373.109, F.S. The inflation index used is the price paid by all urban consumers for a market basket of consumer goods and services; specifically, the CPI figures for the “CPI-U, U.S. City Average. All Items” established for the previous five years by the Bureau of Labor Statistics (BLS) (www.bls.gov/cpi), computed as provided in the BLS

publication [Bureau of Labor Statistics Handbook of Methods, Chapter 17](#).

(b) Permit application processing fees for projects grandfathered pursuant to Section 373.414, F.S., wetland resource (dredge and fill) are in the following table:

(3)(b) through (5) No Change.

(6)(a) through (6)(b) No Change.

(c) The governing body submits Certification of Waiver of Permit Application Processing Fee, Form No. 0889, certifying that the permit processing fee is a fiscal hardship due to one of the following factors:

1. through 5. No Change.

[Form 0889](#) is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436 or (561) 682-6436.

(7) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.109, 373.113, 373.421(2), 373.421(6)(b) FS. Law Implemented 218.075, 373.109, 373.421(2), 373.421(6)(b), 403.201 FS. History—New 1-8-89, Amended 1-2-91, 11-15-92, 6-1-93, 1-23-94, 10-3-95, 4-1-96, 11-8-99, 5-24-00, 6-26-02, 7-11-02, 8-10-03, 8-14-03, 11-18-07, 11-1-09, 12-1-11.

40E-1.615 Coordinated Agency Review Procedures for the Florida Keys Area of Critical State Concern.

(1) through (2) No Change.

(3) (a) through (b) No Change.

(c) The District's Coordinated Review process follows the permit review procedures set forth in Rule 40E-1.603, F.A.C. (Application Procedures for Conceptual Approval, Individual and Standard ~~General~~ Environmental Resource Permits, Individual and General Surface Water Management Permits, and Individual Water Use Permits).

(d) No Change.

(e) The Certification of the Coordinated Review Application required by Section 380.051(2)(a), F.S., and subsections 9J-19.002(3) (Purpose) and 9J-19.009(1) and (2) (Completion of Substantive Review), F.A.C., shall occur within 60 days after the District begins substantive review, and shall consist of the notice of proposed agency action together with the staff report on the individual permit pursuant to subsection 40E-1.603(6) (Procedures for Application for Individual Environmental Resource and Water Use Permits), F.A.C., which may recommend denial to the Governing Board, or approval, or approval with conditions to its designee ~~or denial of the permit~~.

(f) Certification concludes the coordinated agency review process. However, the applicant may complete the permit process as set forth in subsections 40E-1.603(6)-(11), F.A.C., which results in the Governing Board's denial, or approval, or approval with conditions to its designee ~~or denial of the permit~~.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 380.051, 668.003, 668.004, 668.50 FS. Law Implemented 380.051, 668.003, 668.004, 668.50 FS. History— New 9-22-87, Amended 10-3-95, 10-1-06, 12-1-11.

40E-1.659 Forms and Instructions.

The following forms and instructions are incorporated by reference throughout the District's rules as specified below and are listed herein for convenience. Hyperlinks are provided in the rules in which the forms and instructions are referenced and ~~Copies~~ can be obtained without cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436, or (561) 682-6436 ~~or online at~~ www.sfwmd.gov:

Form No.	Date	Title
0050A	7-89	Application to the South Florida Water Management District for a Permit for Utilization of District Works or Modification of Existing Permit Works of the District No.
0108	3-91	Application for Release of Mineral, Canal, and Road Reservations Reserved Under Chapters 6456, 6957, 7305, 9131, 14717 and 20658, Laws of Florida
0113	8-95	Surface Water Management Permit No.
0115	8-95	Surface Water Management Permit Modification No.
0119	8-95	Wetland Resource Permit No.
0122	4-93	Application to the South Florida Water Management District for Authority to Utilize Works or Land of the District
0123	4-95	Well Construction Permit Application
0124	11-90	Well Completion Report
0145	8-95	Environmental Resource Permit No.
0157	8-95	Environmental Resource Permit Modification No.
0188-QMQ	8-03	Quarterly Report of Withdrawals
0188-MDQ	8-03	Monthly Report of Daily Withdrawals
0188-QASR	8-03	Quarterly Report of Injections and Withdrawals for Aquifer Storage and Recovery (ASR) Wells
0188-QMON	8-03	Quarterly Report of Monitoring Requirements
0188-QMQF	8-03	Quarterly Report of Withdrawals from Wells and Surface Water Pumps
0188-QCROP	8-03	Report of Planting and Harvest of Seasonal Crops
0188-QBWDR	8-03	Quarterly Report of Bulk Water Delivered and Received
0195	6-91	Public Water Supply Well Information and Classification
0196	10-89	Water Well Inspection Scheduling Card
0299	1-90	Water Use Permit No.
0444	8-95	Application for a Standard General Permit for Incidental Site Activities, <u>incorporated by reference in paragraph 40E-40.042(5), F.A.C.</u>
0445	8-03	Mining/Dewatering Permit Application (RC-1A, RC-1W, RC-1G)
0483	9-04	Request for Environmental Resource, Surface Water Management, Water Use or Wetland Resource Permit Transfer, incorporated by reference in paragraph 40E-1.6107(1), F.A.C.
0645-W01	8-03	Water Use Permit Application (RC-1A, RC-1W, RC-1G)
0645-G60	8-03	Table A Descriptions of Wells
0645-G61-1	8-03	Table B Description of Surface Water Pumps

0645-G61-2	8-03	Table C Description of Culverts
0645-G65	8-03	Table D Crop Information
0645-G74	8-03	Table E Water Received From or Distributed to Other Entities
0645-G69	8-03	Table F Past Water Use & Table G Projected Water Use
0645-G70	8-03	Table H Projected Water Use (For Per Capita Greater than 200 GPD)
0645-G71	8-03	Table I Water Treatment Method and Losses
0645-G72	8-03	Table J Aquifer Storage and Recovery
0645-G73	8-03	Table K Water Supply System Interconnections
0779	5-92	Guidance for Preparing an Application for a “Works of the District” Permit in the Everglades/Application for a Works of the District Permit
0830	4-94	Special Use Application and License
0881A	<u>12-11</u> 9-03	Environmental Resource/Surface Water Management Permit Construction Completion Certification, <u>incorporated by reference in paragraph 40E-4.361(1)(b), F.A.C.</u>
0881B	<u>12-11</u> 9-03	Environmental Resource/Surface Water Management Permit Construction Completion Certification-For Projects Permitted Prior to October 3, 1995, <u>incorporated by reference in paragraph 40E-4.361(1)(b), F.A.C.</u>
0889	<u>12-11</u> 9-04	Certification of Waiver of Permit Application Processing Fee, <u>incorporated by reference in paragraph 40E-1.607(6)(b), F.A.C.</u>
0920	<u>12-11</u> 9-04	Request for Conversion of District Environmental Resource/Surface Water Management Permit from Construction Phase to Operation Phase and Transfer of Permit to the Operating Entity, <u>incorporated by reference in paragraph 40E-4.361(1)(a), F.A.C.</u>
0941	8-95	Environmental Resource Standard/Noticed General Permit No.
0942	8-95	Surface Water Management General Permit No.
0960	<u>12-11</u> 9-04	Environmental Resource/Surface Water Management Permit Construction Commencement Notice, <u>incorporated by reference in paragraph 40E-4.381(1)(d), F.A.C.</u>
0961	<u>12-11</u> 9-04	Environmental Resource/Surface Water Management Permit Annual Status Report for Surface Water Management System Construction, <u>incorporated by reference in paragraph 40E-4.381(1)(e), F.A.C.</u>
0970	8-07	Applicant Transmittal Form for Requested Additional Information
0971	<u>12-11</u> 8-07	Joint Application for Environmental Resource Permit/Authorization to Use State Owned Submerged Lands/Federal Dredge and Fill Permit, <u>incorporated by reference in paragraph 40E-4.101(1)(b), F.A.C.</u>
0972	<u>12-11</u> 8-95	Petition for a Formal Wetland and Surface Water Determination, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>
0973	8-95	Above Ground Impoundment Inspection/Certification Report
0974	<u>12-11</u> 8-95	Notice of Intent to Construct a Minor Silvicultural System, <u>incorporated by reference in subsection 40E-400.500(2), F.A.C.</u>
0980	<u>12-11</u> 8-95	Notice of Intent to Use a Noticed General Environmental Resource Permit, <u>incorporated by reference in subsection 40E-400.211(2), F.A.C.</u>
1019	<u>12-11</u> 9-04	Mitigation Bank Performance Bond to Demonstrate Construction/Implementation Financial Assurance, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>

1020	<u>12-11</u> <u>9-04</u>	Mitigation Bank Irrevocable Letter of Credit to Demonstrate Construction/Implementation Financial Assurance, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>
1021	<u>12-11</u> <u>9-04</u>	Mitigation Bank Standby Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>
1022	<u>12-11</u> <u>9-04</u>	Mitigation Bank Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>
1023	<u>12-11</u> <u>9-04</u>	Mitigation Bank Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>
1024	<u>12-11</u> <u>9-04</u>	Mitigation Bank Standby Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>
1105	<u>12-11</u> <u>6-02</u>	Performance Bond to Demonstrate Financial Assurance, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>
1106	<u>12-11</u> <u>6-02</u>	Irrevocable Letter of Credit to Demonstrate Financial Assurance, <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.</u>
1109	8-03	Water Use General Permit
1189	<u>12-11</u> <u>2-06</u>	Notice of Environmental Resource or Surface Water Management Permit, <u>incorporated by reference in subsection 40E-4.101(2), F.A.C.</u>
1190	<u>12-11</u> <u>1-07</u>	Deed of Conservation Easement (Standard), <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C. Section 4.3.8, of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” incorporated by reference in Rule 40E-4.091, F.A.C.</u>
1191	<u>12-11</u> <u>1-07</u>	Deed of Conservation Easement (Standard Passive Recreational), <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C. Section 4.3.8, of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” incorporated by reference in Rule 40E-4.091, F.A.C.</u>
1192	<u>12-11</u> <u>1-07</u>	Deed of Conservation Easement (Standard Riparian), <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C. Section 4.3.8, of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” incorporated by reference in Rule 40E-4.091, F.A.C.</u>
1194	<u>12-11</u> <u>1-07</u>	Deed of Conservation Easement (Third Party Standard), <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C. Section 4.3.8, of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” incorporated by reference in Rule 40E-4.091, F.A.C.</u>
1195	<u>12-11</u> <u>1-07</u>	Deed of Conservation Easement (Third Party Passive Recreational), <u>incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C. Section 4.3.8, of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,”</u>

incorporated by reference in Rule 40E-4.091, F.A.C.

- 1196 12-11 Deed of Conservation Easement (Third Party Riparian), incorporated by
~~1-07~~ reference in paragraph 40E-4.091(1)(a), F.A.C. Section 4.3.8, of the
~~“Basis of Review for Environmental Resource Permit Applications~~
~~within the South Florida Water Management District,”~~ incorporated by
reference in Rule 40E-4.091, F.A.C.
- 1197 12-11 Restrictive Covenant (Standard), incorporated by reference in paragraph
~~1-07~~ 40E-4.091(1)(a), F.A.C. Section 4.3.8, of the “Basis of Review for
~~Environmental Resource Permit Applications within the South Florida~~
~~Water Management District,”~~ incorporated by reference in Rule 40E-
4.091, F.A.C.
- 1318 12-11 Deed of Conservation Easement (Local Governments), incorporated by
~~07-10~~ reference in paragraph 40E-4.091(1)(a), F.A.C. Section 4.3.8, of the
~~“Basis of Review for Environmental Resource Permit Applications~~
~~within the South Florida Water Management District,”~~ incorporated by
reference in Rule 40E-4.091, F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority ~~120.53, 218.075, 373.044, 373.113, 373.4136, 373.416, 695.03, 704.06~~

FS. Law Implemented ~~120.53, 218.075, 373.113, 373.4135, 373.4136, 373.416, 704.06~~ FS.

*History–New 9-3-81, Amended 12-1-82, 3-9-83, Formerly 16K-1.90, Amended 7-26-87, 11-21-
89, 1-4-93, Formerly 40E-1.901, Amended 5-11-93, 4-20-94, 10-3-95, 6-26-02, 8-14-02, 8-31-03,
9-16-03, 9-20-04, 2-12-06, 1-23-07, 8-7-07, 7-4-10, 12-1-11.*

40E-4.011 Policy and Purpose.

(1) through (2) No Change.

(3) The rules relating to environmental resource permits are found in this chapter, Chapters 40E-40, (Environmental Resource Standard General Permits) and 40E-41, F.A.C. (Surface Water Management Basin and Related Criteria). In addition, no notice and noticed environmental resource general permits are found in Chapter 40E-400, F.A.C.

(4) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Specific Authority 373.044, 373.113 FS. Law Implemented 373.086(1), 373.103(1),

*373.103(4), 373.403-.443 FS. History–New 9-3-81, Formerly 16K-4.01, Amended 4-20-94, 10-3-
95, 12-1-11.*

40E-4.021 Definitions.

When used in this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

(1) through (4) No Change.

(5) “Conceptual Approval” means an environmental resource permit, issued by the District ~~Governing Board~~ which approves a conceptual master plan for a surface water management system or a mitigation bank. Conceptual approvals constitute final District action, and are binding to the extent that adequate data has been made available for review by the applicant during the review process. To the extent that there is any inconsistency between the permit, staff report, and other information in the application file, the permit and staff report shall control.

(6) through (11) No Change.

(12) “e-Permitting website” means the District’s website address for e-Permitting at <http://www.sfwmd.gov/ePermitting>. ~~http://my.sfwmd.gov/ePermitting. After accessing the e-Permitting website, the user clicks the start icon on the e-Permitting page.~~

(13) through (22) No Change.

(23) “General Permit” means a no notice ~~or~~; noticed ~~or standard~~ general environmental resource permit issued by District staff. However, staff recommendations for denial of noticed ~~or standard~~ general permit applications shall be considered by the Governing Board.

(24) through (25) No Change.

(26) “Individual Permit” means an environmental resource permit issued by the District ~~Governing Board~~.

(27) through (46) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.019, 373.403-.443, 403.031, 668.003, 668.004, 668.50, 704.06 FS. History–New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-1.05(1), Amended 7-1-86, 4-20-94, 10-3-95, 4-1-96, 10-1-06, 3-22-09, 11-11-09, 12-1-11.

40E-4.041 Permits Required.

(1) No Change.

(2)(a) and (b) No change.

(c) General permits are issued in ~~two~~ three forms: no notice ~~and~~; noticed ~~and standard~~ general environmental resource permits. General permits are issued for specified activities or projects that satisfy the thresholds and conditions of Chapters ~~40E-40 and~~ 40E-400, F.A.C. ~~Standard general permits are issued pursuant to Chapter 40E-40, F.A.C.~~ No notice and noticed general permits are issued pursuant to Chapter 40E-400, F.A.C.

1. If the District notifies an applicant that the system for which a noticed general permit is sought does not qualify for the noticed general permit, the applicant may apply for a standard ~~general~~ or individual permit.

2. The application fee for the noticed general permit shall be applied to the application fee for a standard ~~general~~ or individual permit if the applicant applies for such a permit within 60 days of notification by the District.

(3) No Change.

(4) The District issues two types of mitigation bank environmental resource permits: conceptual approvals and individual permits, pursuant to Section 4.4 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” incorporated by reference in ~~paragraph Rule~~ 40E-4.091(1)(a), F.A.C. A conceptual approval does not authorize the establishment or operation of the mitigation bank. A mitigation bank individual permit authorizes the establishment and operation of a mitigation bank and constitutes authorization pursuant to Chapters 40E-4, 40E-40; or 40E-400, F.A.C., as applicable, to construct any surface water management system proposed as part of the mitigation bank.

(5) No change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.406(5) FS. Law Implemented 373.103, 373.413, 373.416, 373.426 FS. History–New 9-3-81, Amended 12-1-82, Formerly 16K-4.03(1), 16K-4.07(1), 16K-4.09(1), Amended 1-23-94, 4-20-94, 10-3-95, 4-1-96, 1-7-97, 7-22-07, 12-1-11.

40E-4.0415 Permit Thresholds.

(1) No Change.

(2) Any non-exempt system which does not qualify for a noticed or no notice general environmental resource permit pursuant to Chapter 40E-400, F.A.C., and does not exceed the standard for individual permits listed above, shall obtain a standard ~~general~~ permit pursuant to Chapter 40E-40, F.A.C.

(3) Notwithstanding the provisions of subsections (1) and (2):

(a) No Change.

(b) Phases within a conceptually approved project shall be processed as standard ~~general~~ permits provided:

1. through 3. No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.406(5) FS. Law Implemented 373.118(1), 373.413(1) FS. History—New 10-3-95, Amended 5-28-00, 6-26-02, 4-14-03, 12-1-11.

40E-4.042 Formal Determination of Wetlands and Other Surface Waters.

(1) In accordance with subsection 373.421(2), F.S., a real property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in real property may petition the District for a formal determination of the landward boundaries of wetlands and other surface waters on that property as defined in Chapter 62-340, F.A.C., and ratified by Section 373.4211, F.S., and incorporated by reference in paragraph 40E-4.091(1)(g), F.A.C.

(2) No Change.

(3) The process and procedures for filing a petition for a formal determination of wetlands and other surface waters are set forth in Section 4.5 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District.”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C.

(4) through (5) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.043, 373.113, 373.421(2) FS. Law Implemented 373.421(2) FS. History—New 10-3-95, Amended 7-22-07, 12-1-11.

40E-4.051 Exemptions From Permitting.

(1) through (2) No Change.

(3)(a) through (3)(b) No Change.

(c) Construction of private docks as described in Section 403.813(1)(i), F.S., in artificially created waterways where construction will not violate water quality standards, impede navigation, or adversely affect flood control.

(d) through (e) No Change.

(4) through (5) No Change.

(6) Bridges, Driveways and Roadway Crossings.

(a) No Change.

(b) 1. through 10. No Change.

11. The person performing the exempt activity shall implement measures for erosion and pollution control using best management practices, including turbidity curtains or similar devices

and other site specific practices, in strict adherence to the Florida Department of Transportation's "Standard Specifications for Road and Bridge Construction," and Chapter 6 of the Department's "Florida Development Manual," to prevent violations of state water quality standards. Temporary erosion controls shall be implemented prior to and during construction, and permanent erosion control measures for all exposed soils shall be completed within 7 calendar days of the most recent construction activity;

12. through 15. No Change.

(7) through (12) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.406, 373.413, 373.416, 403.813(2) FS. History—New 9-3-81, Amended 1-31-82, 3-9-83, Formerly 16K-4.02, Amended 4-20-94, 10-3-95, 5-28-00, 9-2-01, 4-14-03, 9-9-07, 12-1-11.

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference herein into this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

(a) Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, effective date December 1, 2011 July 4, 2010, which incorporates the following forms or materials by reference herein:

1. Form No. 0972, Petition for a Formal Wetland and Surface Water Determination, effective date December 1, 2011;
2. Form No. 1019, Mitigation Bank Performance Bond to Demonstrate Construction/Implementation Financial Assurance, effective date December 1, 2011;
3. Form No. 1020, Mitigation Bank Irrevocable Letter of Credit to Demonstrate Construction/Implementation Financial Assurance, effective date December 1, 2011;
4. Form No. 1021, Mitigation Bank Standby Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance, effective date December 1, 2011;
5. Form No. 1022, Mitigation Bank Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance, effective date December 1, 2011;
6. Form No. 1023, Mitigation Bank Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance, effective date December 1, 2011;
7. Form No. 1024, Mitigation Bank Standby Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance, effective date December 1, 2011;
8. Form No. 1105, Performance Bond, effective date December 1, 2011;
9. Form No. 1106, Irrevocable Letter of Credit, effective date December 1, 2011;
10. Form No. 1190, Deed of Conservation Easement (Standard), effective date December 1, 2011 January 23, 2007;
11. Form No. 1191, Deed of Conservation Easement (Standard Passive Recreational), effective date December 1, 2011; January 23, 2007;
12. Form No. 1192, Deed of Conservation Easement (Standard Riparian), effective date December 1, 2011; January 23, 2007;
13. Form No. 1194, Deed of Conservation Easement (Third Party Standard), effective date December 1, 2011; January 23, 2007;
14. Form No. 1195, Deed of Conservation Easement (Third Party Passive Recreational), effective date December 1, 2011 January 23, 2007;
15. Form No. 1196, Deed of Conservation Easement (Third Party Riparian), effective

date ~~December 1, 2011~~ ~~January 23, 2007~~;

~~16~~ 7. [Form No. 1197](#), Restrictive Covenant (Standard), effective date ~~December 1, 2011~~ ~~January 23, 2007~~;

~~17~~ 8. [Form No. 1318](#), Deed of Conservation Easement (Local Governments), effective date ~~December 1, 2011~~ ~~July 4, 2010~~;

~~18.~~ [Chapter 27, Article XIII, Wellfield Protection Ordinance, Broward County Code of Ordinances](#), last amended ~~September 28, 1999~~; and

~~19.~~ [Dade County Wellfield Protection Ordinance contour showing maximum limits \(Section 24-43 Protection of Public Potable Water Supply Wells; Chapter 24 Environmental Protection; Code of Metropolitan Dade County, Florida; Codified through Ordinance No. 11-01, enacted January 20, 2011 \(Supp. No. 68\)\)](#).

(b) [50 C.F.R. section 17.12](#), 50 Code of Federal Regulations effective date April 8, 2004; and [Rule 68A-27.003, F.A.C.](#), effective date December 16, 2003, [Rule 68A-27.004, F.A.C.](#), effective date May 15, 2008, and [Rule 68A-27.005, F.A.C.](#), effective date November 8, 2007.

(c) [Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., between South Florida Water Management District and Department of Environmental Protection](#), effective July 1, 2007.

(d) State water quality standards set forth in [Chapter 62-4, F.A.C.](#), effective date April 21, 2009; [Chapter 62-302, F.A.C.](#), effective date August 5, 2010, [Chapter 62-520, F.A.C.](#), effective date July 12, 2009; [Chapter 62-522, F.A.C.](#), effective date July 12, 2009, and [Chapter 62-550, F.A.C.](#), effective date September 18, 2007.

(e) [Chapter 62-312, Part IV, F.A.C.](#), "Additional Criteria for Dredging and Filling Within Outstanding Florida Waters in Monroe County," effective date March 15, 2007.

(f) [40 C.F.R. Code of Federal Regulations](#), section 264.143(f), for the purpose of providing financial responsibility and corporate guarantee requirements, effective date September 16, 1992.

~~(g) Chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Protection, 1988).~~

~~(g) (h) Chapter 62-340, F.A.C., as ratified by Section 373.4211, F.S.~~, for the purpose of delineating wetlands and other surface waters, effective date July 1, 1994.

~~(i) Chapter 3, Roadside Design Guide (American Association of State Highway and Transportation Officials, October 1988).~~

~~(h) (j) 30 C.F.R., section 800.23, Code of Federal Regulations for the purpose of providing self bonding provisions requirements~~, effective date January 14, 1988.

~~(i) (k) Delegation Agreement among the Florida Department of Environmental Protection, the South Florida Water Management District, and Broward County~~, (dated May 22, 2001).

~~(j) (2) The documents listed in subsection (1) are available online at www.sfwmd.gov or can also be obtained at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436, or (561) 682-6436.~~

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.103(8), 373.113, 373.171, 373.413, 373.441, 668.003, 668.004, 668.50, 704.06 FS. Law Implemented 373.413, 373.4135, 373.4137, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, 373.441, 668.003, 668.004, 668.50, 704.06 FS. History— New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00,

8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 2-12-06, 10-1-06, 11-20-06, 1-23-07, 7-1-07, 7-22-07, 11-11-09, 7-1-10, 7-4-10, 12-1-11.

40E-4.101 Content of Permit Applications.

(1) Applications for permits required by this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C., shall be filed electronically at www.sfwmd.gov/ePermitting, or at South Florida Water Management District, Regulation Reception Desk, 3301 Gun Club Road, West Palm Beach, FL 33406, (561) 682-6736, or at any of the District's Service Centers. The addresses and phone numbers of the District's Service Centers are online at www.sfwmd.gov, "Locations." ~~with the District Service Center which will review the application as set forth in Rule 40E-1.6025, F.A.C. or filed electronically at the District's e-Permitting website.~~ For projects located in Broward County, applications shall be filed either at the District's Headquarters in West Palm Beach or with Broward County Environmental Protection and Growth Management Department, Development and Environmental Regulation Division, 1 North University Drive, Suite 201, Plantation, FL 33324, (954) 519-1473, in accordance with the Delegation Agreement among the Florida Department of Environmental Protection, the South Florida Water Management District, and Broward County, dated May 22, 2001, incorporated by reference in paragraph 40E-4.091(1)(h), F.A.C. The application shall contain:

(a) No Change.

(b) One original and four copies of Joint Water Management District/Department of Environmental Protection/U.S. Army Corps of Engineers Environmental Resource Permit Application (Form No. 0971), and five copies of drawings, calculations, environmental information, and engineering details sufficient to define the nature, scope, intent and functioning of the work proposed. This information must include at a minimum: flood protection, water quality, environmental impacts, proposed mitigation, water supply, and water conservation elements. Applicants who file an application electronically are not required to submit copies. Form No. 0971, effective date December 2011, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436 or (561) 682-6436. ~~at any of the District's Service Centers upon request.~~

(2) The application must be signed by the owner or the owner's authorized agent and include documentation of ownership. Applications signed by agents must contain a letter of authorization which is signed by the owner. Those having the right to exercise the power of eminent domain or having a contract to purchase real property may apply for a permit, however, the permit shall prohibit commencement of work until the permittee provides proof of ownership to the District. A permit shall only be issued to the record title holder, holder of a recorded easement conveying the right to utilize the property for a purpose consistent with the authorization requested in the permit application, those having the right to exercise the power of eminent domain or having a contract to purchase real property. A Notice of Environmental Resource or Surface Water Management Permit (Form No. 1189), shall be recorded in the public records of the county where the property is located. This notice shall not be considered an encumbrance upon the property. Form No. 1189, effective date December 2011, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436 or (561) 682-6436.

(3) Environmental resource permit applications shall be filed and processed in accordance

with Chapters 120 and 373, F.S., following the procedures set forth in Chapter 40E-1, F.A.C., and by utilizing the forms ~~listed incorporated by reference into~~ Rule 40E-1.659, F.A.C.

(4) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.016, 373.044, 373.113, 373.171, 668.003, 373.416, 668.004, 668.50 FS. Law Implemented 373.016, 373.117, 373.413, 373.416, 373.426, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.03(2), 16K-4.07(2), 16K-4.09(2), Amended 7-1-86, 11-21-89, 4-20-94, 10-3-95, 5-28-00, 4-14-03, 8-14-03, 2-12-06, 10-1-06, 12-1-11.

40E-4.201 Forms and Instructions.

(1) No Change.

~~(2) Forms and instructions are available from District Service Centers upon request.~~

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 120.53(1), 373.044, 373.113, 373.118 FS. Law Implemented 120.53(1), 373.044, 373.113, 373.116, 373.118, 373.229, 373.413, 373.421 FS. History—New 10-3-95, Amended 12-1-11.

40E-4.301 Conditions for Issuance of Permits.

(1) through (1)(d) No Change.

(e) Will not adversely affect the quality of receiving waters such that the water quality standards set forth in Chapters 62-4, 62-302, 62-520, 62-522 and 62-550, F.A.C., incorporated by reference in paragraph 40E-4.091(1)(d), F.A.C., including any antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300, F.A.C., any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated.

(f) through (k) No Change.

(2) If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the applicant must comply with the requirements set forth in subsection 4.4.4.5 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C.

(3) The standards and criteria, including the mitigation provisions, and the provisions for elimination or reduction of impacts, contained in the “Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District,”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C., shall determine whether the reasonable assurances required by subsection 40E-4.301(1) and Rule 40E-4.302, F.A.C., have been provided.

(4) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416, 373.426 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(2), 16K-4.30, Amended 7-1-86, 3-24-87, 4-14-87, 7-9-87, 4-21-88, 4-20-94, 10-3-95, 4-1-96, 1-7-97, 7-22-07, 12-1-11.

40E-4.302 Additional Conditions for Issuance of Permits.

(1) In addition to the conditions set forth in Rule 40E-4.301, F.A.C., in order to obtain a

standard, general, individual, or conceptual approval permit under this chapter or Chapter 40E-40, F.A.C., an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, and abandonment of a system:

(a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the activity will be clearly in the public interest, as determined by balancing the following criteria as set forth in subsections 4.2.3- through 4.2.3.7 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District₂”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C.

1. through 7. No Change.

(b) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters as set forth in subsections 4.2.8 through 4.2.8.2 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District₂”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C.

(c) Located in, adjacent to, or in close proximity to Class II waters or located in Class II waters or Class III waters classified by the Department as approved, restricted or conditionally restricted for shellfish harvesting as set forth and incorporated in Chapter ~~5L-1 62R-7~~, will comply with the additional criteria in subsection 4.2.5 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District₂”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C.

(d) Which constitute vertical seawalls in estuaries or lagoons, will comply with the additional criteria provided in subsection 4.2.6 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District₂”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C.

(2) When determining whether the applicant has provided reasonable assurances that District permitting standards will be met, the District shall take into consideration a permit applicant’s violation of any Department rules adopted pursuant to Sections 403.91-.929, F.S. (1984 Supp.), as amended, which the District had the responsibility to enforce pursuant to a delegation, or any District rules adopted pursuant to Part IV, Chapter 373, F.S., relating to any other project or activity and efforts taken by the applicant to resolve these violations. The Department’s delegation to the District to enforce the rules adopted pursuant to Sections 403.91-.929, F.S. (1984 Supp.), as amended, is set forth in the “Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., between South Florida Water Management District and Department of Environmental Protection” dated July 1, 2007, incorporated by reference in paragraph Rule 40E-4.091(1)(c), F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.171, 373.414(9) FS. Law Implemented 373.042, 373.409, 373.413, 373.414, 373.416, 373.426, 380.23 FS. History—New 10-3-95, Amended 1-7-97, 12-3-98, 5-28-00, 7-1-07, 7-22-07, 12-1-11.

40E-4.303 Environmental Resource Permit Authorization.

(1) For individual, ~~and~~ standard and general permits issued pursuant to Chapters 40E-4 and 40E-40, F.A.C., a completed permit application shall also constitute an application for certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341. Issuance of the permit shall constitute certification of compliance with state water quality standards unless the permit is issued pursuant

to the net improvement provisions of subsection 373.414(1)(b), F.S., or the permit specifically states otherwise.

(2) For projects located in or seaward of coastal counties, and which have regulated activities in, on or over wetlands or other surface waters, as delineated by the methodology ratified pursuant to Section 373.4211, F.S., a complete application for an individual, ~~or~~ standard or general environmental resource permit shall constitute a request for the ~~s~~State's concurrence that the project is consistent with the Florida Coastal Zone Management Program as provided in Section 307 of the Coastal Zone Management Act and 15 C.F.R. 930, Subpart D. Issuance of the permit shall constitute such concurrence of consistency.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416, 373.421 FS. History—New 10-3-95, 12-1-11.

40E-4.305 Conceptual Approvals.

(1) through (3) No Change.

(4) For phased projects, the approval process must begin with an application for a conceptual approval which shall be the first permit issued for the project. An application for construction authorization of the first phase(s) may also be included as a part of the initial application. As the permittee desires to construct additional phases, new applications shall be processed as individual, ~~or~~ standard or general environmental resource permit applications pursuant to the conceptual approval. The conceptual approval, individual, ~~and~~ standard and general permits shall be modified in accordance with conditions contained in Chapters 40E-4 and 40E-40, F.A.C.

(5) through (10) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.171, 380.06(9) FS. Law Implemented 373.413, 373.416, 373.421(2), 380.06(9) FS. History—New 10-3-95, Amended 4-14-03, 12-1-11.

40E-4.321 Duration of Permits.

(1) Unless revoked or otherwise modified the duration of an environmental resource permit issued under this chapter or Chapter 40E-40, F.A.C., is as follows:

(a) For a conceptual approval, two years from the date of issuance or the date specified as a condition of the permit, unless within that period an application for an individual, ~~or~~ standard or general permit is filed for any portion of the project. If an application for an environmental resource permit is filed, then the conceptual approval remains valid until final action is taken on the environmental resource permit application. If the application is granted, then the conceptual approval is valid for an additional two years from the date of issuance of the permit. Conceptual approvals which have no individual, ~~or~~ standard or general environmental resource permit applications filed for a period of two years shall expire automatically at the end of the two-year period.

(b) No Change.

1. through 4. No Change.

(c) For an individual, ~~or~~ standard or general environmental resource permit, the construction phase authorizing construction, removal, alteration or abandonment of a system shall expire five years from the date of issuance or such amount of time as made a condition of the permit.

(d) For an individual, ~~or~~ standard or general environmental resource permit, the operational phase of the permit is perpetual for operation and maintenance.

(e) No Change.

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made by electronic mail at the District's e-Permitting website or in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. The ~~District Governing Board~~ takes action on an application for extension of an individual permit, or

2. Staff takes action on an application for extension of a standard ~~general~~ permit.

(b) Installation of the project outfall structure shall not constitute a vesting of the permit.

(3) through (4) No Change.

(5) Substantial modifications to individual, ~~or~~ standard or general environmental resource permits issued pursuant to a permit application extend the duration of the permit for three years from the date of issuance of the modification. Individual, ~~or~~ standard or general environmental resource permit modifications do not extend the duration of a conceptual approval.

(6) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.413, 373.416, 373.419, 373.426, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(4), Amended 7-1-86, 4-20-94, 10-3-95, 5-28-00, 10-1-06, 12-1-11.

40E-4.331 Modification of Permits.

An application for modification of an environmental resource, or surface water management permit shall be processed in accordance with this rule, unless the permit has expired or has been otherwise revoked or suspended.

(1) No Change.

(2) Applications to modify environmental resource, or surface water management individual, ~~or~~ standard or general permits shall be made by the following methods:

(a) through (b) No Change.

(c) Modifications pursuant to paragraph (2)(b) above are acknowledged and approved by letter from the Regulation Division ~~Department~~ Director or designee through correspondence to the permittee.

(3) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416(1) FS. History—New 12-1-82, Formerly 16K-2.031(1), 16K-2.032(1)(a), Amended 7-1-86, 11-21-89, 4-20-94, 10-3-95, 12-1-11.

40E-4.361 Conversion from Construction Phase to Operation Phase.

(1) In order to convert an environmental resource or surface water management permit from the construction phase to the operational phase, the permittee shall submit the following:

(a) A completed and executed Request for Conversion of Environmental Resource/Surface Water Management Permit from Construction Phase to Operation Phase and Transfer of Permit to the Operating Entity (Form No. 0920), ~~incorporated by reference in Rule 40E-1.659, F.A.C. Form No. 0920~~, effective date December 2011, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun

Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436 or (561) 682-6436. in Rule 40E-1.659, F.A.C.;

(b) A completed and executed Environmental Resource/Surface Water Management Permit Construction Completion Certification (Form No. 0881A or Environmental Resource/Surface Water Management Permit Construction Completion Certification – For Projects Permitted Prior to October 3, 1995 (Form No. 0881B), ~~incorporated by reference in Rule 40E-1.659, F.A.C.~~ in accordance with Section 10.0 of the “Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District,”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C. Form No. 0881A and Form No. 0881B, both effective December 2011, are incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk’s Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436 or (561) 682-6436; and

(c) No Change.

(2)(a) through (2)(b)1. No Change.

2. Any deviations from the approved plans and specifications will not prevent the system from functioning in compliance with the requirements of this rule and Section 10.0 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C. The professional engineer or other individual authorized by law shall note and explain substantial deviations from the approved plans and specifications and provide two copies of as-built drawings to the District or submit electronically at www.sfwmd.gov/ePermitting; and

(c) No Change.

(3) A conversion to the operational phase shall not occur until a responsible entity meeting the requirements in Section 9.0, of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,”; incorporated by reference in paragraph Rule 40E-4.091(1)(a), F.A.C., has been established to operate and maintain the system. The entity must be provided with sufficient ownership, legal or equitable interest so that it has control over all water management facilities authorized by the permit.

(4) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.413, 373.416 FS. History–New 10-3-95, Amended 1-7-97, 4-14-03, 9-16-03, 7-22-07, 12-1-11.

40E-4.381 General Conditions.

(1) through (1)(b) No Change.

(c) Activities approved by this permit shall be conducted in a manner which does not cause violations of state water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. ~~All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988)~~

~~incorporated by reference in Rule 40E-4.091, F.A.C., unless a project-specific erosion and sediment control plan is approved as part of the permit.~~ Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

(d) The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource/Surface Water Management Permit Construction Commencement Notice (Form No. 0960), ~~incorporated by reference in Rule 40E-1.659, F.A.C.~~, indicating the actual start date and the expected completion date. Form No. 0960, effective date December 2011, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436 or (561) 682-6436.

(e) When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing the District's Environmental Resource/Surface Water Management Permit Annual Status Report for Surface Water Management System Construction (Form No. 0961), ~~incorporated by reference in Rule 40E-1.659, F.A.C.~~ The Annual Status Report Forms shall be submitted the following June of each year. Form No. 0961, effective date December 2011, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436 or (561) 682-6436.

(f) Within thirty days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a professional engineer or other individual authorized by law, utilizing the supplied Environmental Resource/Surface Water Management Permit Construction Completion Certification (Form No. 0881A), or Environmental Resource/Surface Water Management Permit Construction Completion Certification – For Projects Permitted Prior to October 3, 1995 (Form No. 0881B), ~~September 2003, incorporated by reference in paragraph 40E-4.361(1)(b), F.A.C., Rule 40E-1.659, F.A.C.~~ The statement of completion and certification shall be based on on-site observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as “as-built” or “record” drawings. All surveyed dimensions and elevations shall be certified by a registered surveyor.

(g) The operation phase of this permit shall not become effective until: the permittee has complied with the requirements of paragraph (f) above, has submitted a Request for Conversion of Environmental Resource/Surface Water Management Permit from Construction Phase to Operation Phase and Transfer of Permit to the Operating Entity (Form No. 0920), ~~incorporated by reference in Rule 40E-1.659, F.A.C.~~; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” incorporated by reference in

paragraph Rule 40E-4.091(1)(a), F.A.C., accepts responsibility for operation and maintenance of the system. Form No. 0920, effective date December 2011, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6436 or (561) 682-6436.

The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Rule 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

(h) through (i) No Change.

(j) Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District by electronic mail at the District's e-Permitting website or in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.

(k) through (l) No Change.

(m) The permittee must obtain a water use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to subsection 40E-20.302(3)-(4), F.A.C., also known as the "No Notice" rule.

(n) through (q) No Change.

(r) If historical or archaeological artifacts are discovered at any time on the project site, the permittee, or other designee, should contact shall immediately notify the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or (800) 847-7278, as well as the appropriate District Service Center. The phone numbers and addresses for the District's Service Centers are located online at www.sfwmd.gov, "Locations."

(s) No Change.

(2) In addition to those general conditions set forth in subsection (1), the ~~District Governing Board~~ shall impose on any permit granted under this chapter and Chapter 40E-40, F.A.C., such reasonable project-specific special conditions as are necessary to ensure that the permitted system will meet the conditions for issuance in Rules 40E-4.301 and 40E-4.302, F.A.C. Upon receipt of notice of proposed agency action, any substantially affected persons shall have the right to request a hearing in accordance with Rules 40E-1.511 and 40E-1.521, F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.171, 668.003, 668.004, 668.50 FS. Law Implemented 373.116, 373.229, 373.413, 373.416, 373.421, 373.422, 373.426, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(3), 16K-4.38, Amended 7-1-86, 4-20-94, 10-3-95, 1-7-97, 4-14-03, 9-16-03, 10-1-06, 7-22-07, 12-1-11.

CHAPTER 40E-40

~~GENERAL ENVIRONMENTAL RESOURCE STANDARD PERMITS~~

40E-40.010 Review of Environmental Resource Standard ~~General~~ Permit Applications.

Environmental ~~r~~Resource ~~s~~Standard ~~General~~ permit applications are processed pursuant to Section 120.60, F.S., Part VI of Chapter 40E-1, F.A.C., and Chapter 28-106, F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 120.54(5), 120.60 FS. Law Implemented 120.54(5), 120.60 FS. History—

New 7-2-98, 12-1-11.

40E-40.011 Policy and Purpose.

(1) The rules in this chapter authorize environmental resource standard ~~general~~ permits for certain surface water management systems which have been determined to be not harmful to the water resources of the District and to be not inconsistent with the objectives of the District. This chapter sets forth the requirements for qualifying for a standard ~~general~~ permit and the conditions under which it may be exercised. Unless expressly exempted by Rule 40E-4.051, F.A.C., surface water management systems which do not qualify for a no notice or noticed general permit pursuant to Chapter 40E-400, F.A.C., and which do not qualify for a standard ~~general~~ permit pursuant to this chapter are required to obtain individual environmental resource permits pursuant to Chapter 40E-4, F.A.C.

(2) No Change.

(3) The rules in this chapter also authorize standard ~~general~~ permits for incidental site activities in uplands which may be done in conjunction with the work set forth in an individual environmental resource permit application. Projects qualifying for a standard ~~general~~ permit for incidental site activities shall obtain an individual environmental resource permit for the proposed system and activities in, on, or over wetlands or other surface waters in accordance with this chapter, Chapter 40E-4 or 40E-400, F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118, 373.413(1) FS. Law Implemented 373.118, 373.413(1), 373.416 FS. History—New 9-3-81, Formerly 16K-4.021(1)(d), 16K-4.022(1)(e), Amended 7-26-87, 4-20-94, 10-3-95, 12-1-11.

40E-40.031 Implementation.

(1) Rule 40E-4.031, F.A.C., specifies the effective dates for the environmental resource standard ~~general~~ permits granted in this chapter.

(2) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118(1) FS. Law Implemented 373.103(1), Part IV, Ch. 373 FS. History—New 9-3-81, Amended 12-1-82, 7-26-87, 4-20-94, 10-3-95, 12-1-11.

40E-40.041 Permit Thresholds.

(1) Any non-exempt surface water management systems which do not qualify for a no notice or noticed general environmental resource permit, and do not exceed the threshold for individual permits as listed below, shall obtain a standard ~~general~~ permit.

(2) No Change.

(3) Notwithstanding the provisions of subsection (2), phases within a conceptually approved project shall be processed as standard ~~general~~ permits provided:

(a) through (c) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.406(5), 373.413(1), 373.416 FS. History—New 4-20-94, Amended 10-3-95, 5-28-00, 6-26-02, 12-1-11.

40E-40.042 Standard ~~General~~ Permit for Incidental Site Activities.

(1) through (2) No Change.

(3) In order to receive a permit under this rule the applicant must:

(a) Submit an environmental resource permit application deemed complete, as evidenced by a letter of completeness from the District;

(b) Receive a preliminary staff recommendation of approval of such application; ~~and~~

(c) Submit Form 0444 and plans or a description of incidental site activities proposed, including proposed locations for work; and

(d) No Change.

(4) No Change.

(5) An application for a Standard General Permit for Incidental Site Activities, Form No. 0444 must be submitted ~~Authorization~~ to conduct incidental site activities pursuant to this rule. ~~must be approved by the Regulation Department Director or designee by letter to the applicant.~~ Form No. 0444, effective date December 2011, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext 6436, or (561) 682-6436.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 120.60(2), 373.103(4), 373.118, 373.413, 373.416 FS. History—New 9-3-81, Formerly 16K-4.021(1), 16K-4.022(1), Amended 12-1-82, 7-26-87, 4-20-94, 10-3-95, 5-28-00, 12-1-11.

40E-40.051 Standard General Permit Authorization.

(1) Application procedures for standard ~~general~~ environmental resource permits are set forth in Rule 40E-1.603, F.A.C., and are incorporated by reference in this rule.

(2) Standard ~~general~~ environmental resource permit authorizations are set forth in Rule 40E-4.303, F.A.C., and are incorporated by reference in this rule.

(3) Agency action shall be taken no later than 60 days after a standard ~~general~~ permit application is declared complete, unless waived by the applicant or stayed by the filing of a petition for an administrative hearing.

(4) For applications for standard ~~general~~ permits, the ~~Governing Board delegates to and appoints the Executive Director, Deputy Assistant Executive Director, Water Resource Regulation Division Department Director, ~~Water Resource Regulation Division Assistant Department Deputy Director, Environmental Resource Permitting Bureau Chief, Division Director, Division Directors,~~ and Service Center Administrators ~~Directors,~~ shall conduct review and issue as its agents for the purposes of reviewing and issuing these permits.~~

(5) For standard ~~general~~ environmental resource permit applications, or permit applications under subsections 373.414(11)-(16), F.S., which involve activities located on submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund under Chapters 253 or 258, F.A.C., the District shall conduct concurrent application and review procedures in accordance with Section 373.427, F.S., Chapter 18-21, F.A.C., and Rules 62-343.075 and 18-18.014, F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.103(2), 373.103(6), 373.427 FS. History—New 10-3-95, Amended 4-1-96, 5-28-00, 7-19-07, 12-1-11.

40E-40.141 Request for Additional Information.

The District may request additional information from standard ~~general~~ permit applicants in accordance with paragraph 40E-1.603(1)(c), F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.416, 373.419 FS. History—New 9-3-81, Amended 4-20-94, 10-3-95, 4-14-03, 12-1-11.

40E-40.302 Conditions for Issuance of Permits.

In order to qualify for a standard ~~general~~ permit under this chapter, the applicant must give reasonable assurances that the surface water management system meets the following general conditions:

(1) through (2) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.046, 373.413, 373.416 FS. History—New 9-3-81, Formerly 16K-4.021(1)(a), (2), 16K-4.022(1)(a), (b), Amended 12-1-82, 7-26-87, 11-15-92, 4-20-94, 10-3-95, 12-1-11.

40E-40.321 Duration of Permits.

Unless revoked or otherwise modified, the duration of a standard ~~general~~ permit authorized pursuant to this chapter is set forth in Rule 40E-4.321, F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416, 373.419, 373.426 FS. History—New 9-3-81, Amended 12-1-82, 7-26-87, 4-20-94, 10-3-95, 12-1-11.

40E-40.331 Modification of Permits.

A request for modification of an environmental resource standard ~~general~~ permit shall be made in accordance with this chapter, unless the permit has expired or has been otherwise revoked or suspended. Requests to modify such permits shall be made:

(1) through (2) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416(1) FS. History—New 12-1-82, Amended 4-20-94, 10-3-95, 12-1-11.

40E-40.341 District Revocation or Modification of Permits.

The Governing Board may revoke a permit in accordance with the provisions of Chapter 373, F.S., and Rules 40E-1.609 ~~and 28-107.004~~, F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 120.60(6), 373.429 FS. History—New 9-3-81, Formerly 16K-4.021(1)(e), 16K-4.022(1)(f), Amended 12-1-82, 10-3-95, 7-2-98, 12-1-11.

40E-40.381 General Conditions.

(1) The standard ~~general~~ permits authorized pursuant to this chapter shall be subject to the general conditions set forth in Rule 40E-4.381, F.A.C.

(2) In addition to the general conditions referenced in subsection (1), the following shall apply to standard ~~general~~ permits authorizing incidental site activities:

(a) through (f) No Change.

(3) The standard ~~general~~ permit shall be subject to other reasonable conditions as are necessary to assure that the permitted works will meet the conditions for issuance in Rules 40E-

4.301 and 40E-4.302, F.A.C.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.117, 373.118, 373.413, 373.416, 373.419 FS. History—New 9-3-81, Formerly 16K-4.021(1)(b), 16K-4.022(1)(c), Amended 7-26-87, 4-20-94, 10-3-95, 4-14-03, 12-1-11.

40E-40.391 Forms and Instructions.

(1) No Change.

~~—(2) Forms and instructions are available at District Service Centers upon request.~~

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 120.53(1), 373.044, 373.113, 373.118 FS. Law Implemented 120.52(16), 120.53(1), 373.085, 373.116, 373.118, 373.103, 373.106, 373.229, 373.413 FS. History—New 10-3-95, Amended 12-1-11.

40E-41.121 Definitions.

When used in this Part:

(1) No Change.

(2) “Floodplain” means that area depicted on Figure 41-3, Plates 1 through 5, incorporated by reference in Chapter Rule 40E-41, F.A.C. ~~The large scale originals of these plates are located at the main office of the District.~~

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416 FS. History—New 5-1-85, Amended 12-1-11.

40E-41.243 Application of Part III.

(1) All projects located within the C-51 Basin which propose to discharge directly or indirectly into C-51 Canal or which are connected directly or indirectly in the C-51 Basin and which require permits pursuant to Rule 40E-4.041, F.A.C., or this pPart shall be constructed, altered, operated, maintained and abandoned in accordance with the criteria specified in Rules 40E-4.301, ~~or 40E-4.302~~ ~~40E-40.302~~, F.A.C., ~~(Surface Water Management, Conditions for Issuance of a Permit),~~ and 40E-41.263, F.A.C.; ~~(Conditions for Issuance of Surface Water Management Permits in the C-51 Basin),~~ unless specifically exempted by Rule 40E-4.051, F.A.C.; ~~(Surface Water Management, Exemptions).~~

(2) The criteria in Rule 40E-41.263, F.A.C., ~~(Conditions for Issuance of Surface Water Management Permits in the C-51 Basin),~~ shall apply unless the applicant can demonstrate through accepted scientific and technical methodology that the purpose and intent of this rule chapter is fulfilled by the use of alternate criteria.

(3) through (4) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.413, 373.416 FS. History—New 5-15-87, Amended 4-20-94, 12-1-11.

40E-41.260 Content of Application.

(1) No Change.

(2) In addition all projects in the C-51 Basin which require permits pursuant to Rule 40E-4.041, F.A.C., ~~(Surface Water Management, Permits Required),~~ shall submit the information

specified by Rule 40E-4.101 or 40E-40.112, F.A.C.; (~~Surface Water Management, Content of Application~~), and all projects located in the C-51 Basin which require a permit pursuant to Rule 40E-6.041, F.A.C., (~~Works of the District, Consent Required~~), shall submit the information required under Rule 40E-6.101, F.A.C.; (~~Works of the District, Content of Application~~).

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.413, 373.416 FS. History—New 5-15-87, Amended 4-20-94, 12-1-11.

40E-41.263 Conditions for Issuance of ~~Surface Water Management~~ Permits in the C-51 Basin.

The following criteria shall apply:

(1)(a) No Change.

(b) This criteria is not intended to limit inflows to the C-51 Canal to the rates specified in subsection (a) above during non-flood conditions. Discharge capacity up to 27 cfs during non-flood conditions shall be considered on a case-by-case basis pursuant to the criteria in the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C., (~~Basis of Review~~) and Rule 40E-4.301, F.A.C. (~~Conditions for Issuance~~).

(2) through (3) No Change.

(4) All criteria in the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” which is incorporated and adopted by reference in paragraph Rule 40E-4.091(1)(a), F.A.C., (~~Surface Water Management, Publications Incorporated by Reference~~).

(5) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.413, 373.416 FS. History—New 5-15-87, Amended 12-1-11.

40E-41.265 Conditions for Issuance of Right-of-Way Permits in the C-51 Basin.

Any drainage connection to C-51 Canal within the C-51 Basin must be part of a surface water management system approved under Rule 40E-41.263, F.A.C., (~~Conditions for Issuance of Surface Water Management Permits in the C-51 Basin~~).

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086 FS. History—New 5-15-87, Amended 12-1-11.

40E-41.363 Conditions for Issuance of ~~Environmental Resource Permits and Surface Water Management~~ Permits in the Water Preserve Area, Water Preserve Area Basin, or Adjacent to the Protective Levees.

(1) through (6) No Change.

(7) Reduced mitigation ratios set forth in sections 4.3.2.4 and 4.3.9 (~~Melaleuca Rule~~) of the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District,” incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C., shall not apply in the WPA.

(8) In order to qualify for the reduced mitigation ratios set forth in section 4.3.2.4 and 4.3.9 (~~Melaleuca Rule~~) of the “Basis of Review for Environmental Resource Permit Applications

within the South Florida Water Management District,” incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C., projects located within the WPAB shall:

(a) through (c) No Change.

(9) through (10) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.413, 373.416 FS. History–New 10-21-01, Amended 12-1-11.

40E-400.211 Processing Procedures for Noticed General Permits.

(1) No Change.

(2) Any person wishing to construct, operate, maintain, alter, abandon, or remove a surface water management system pursuant to a noticed general permit set forth in this chapter shall provide notice to the District by submitting a complete Notice of Intent to Use a Noticed General Environmental Resource Permit, (Form No. 0980) including the appropriate application fee required in Rule 40E-1.607, F.A.C., to the District at least 30 days prior to undertaking construction, operation, maintenance, alteration, abandonment, or removal of the system. For the purposes of this subsection, the application form is only considered submitted when it is actually received by the District. Form No. 0980, effective date December 2011, is incorporated by reference herein and can available at no cost by contacting the South Florida Water Management District Clerk’s Office, 3301 Gun Club Road, West Palm Beach, FL 33406.

(3) If the District determines that the system does not qualify for a noticed general permit, the District shall so notify the applicant by regular United States mail or electronic mail within 30 days of receiving Form No. 0980. For the purposes of this subsection, District mailing or electronic mailing of notification shall be deemed to occur when the notice is sent electronically or is properly addressed, stamped, and deposited in the United States mail, and the postmark date shall be the date of mailing. When the District notifies the applicant that the system does not qualify for a noticed general permit due to an error or omission in the original notice to the District, the applicant shall have 60 days from the date of the notification to amend the notice to use the general permit and submit additional information to correct such error or omission. If the applicant amends the notice to use a noticed general permit and submits additional information correcting the error or omission within the 60 day time limit, no additional application fee will be required for the noticed general permit. If the District does not mail or electronically mail the notice informing the applicant that the system does not qualify for a noticed general permit within 30 days of receipt of the original notice to use the general permit, or receipt of amended notice to use the general permit, the applicant may conduct the activity authorized by the noticed general permit, except as otherwise provided in Rules 40E-400.475 and 40E-400.500, F.A.C.

(4) If the District notifies an applicant that the system for which a noticed general permit is sought does not qualify for the noticed general permit, the applicant may apply for a standard ~~general~~ or individual permit. The application fee for the noticed general permit shall be applied to the application fee for a standard ~~general~~ or individual permit if the applicant applies for such a permit within 60 days of notification by the District.

(5) through (10) No change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118, 668.003, 668.004, 668.50 FS. Law Implemented 373.109, 373.118, 373.413, 373.416, 373.426, 668.003, 668.004, 668.50 FS. History–New 10-3-95, Amended 7-2-98, 10-1-06, 12-1-11.

40E-400.417 General Permit for Construction, Alteration or Maintenance of Boat Ramps and Associated Accessory Docks.

(1) (a) No Change.

(b) The boat ramp is not part of a larger plan of development proposed by the applicant which requires a standard ~~general~~ or individual environmental resource permit;

(c) through (m) No Change.

(n) The accessory docks shall not be used for overnight mooring, except for accessory docks at a boat ramp at a single family residence.;

(2) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.118, 373.413, 373.416, 373.426 FS. History—New 10-3-95, Amended 4-14-03, 12-1-11.

40E-400.443 General Permit for Minor Bridge Alteration, Replacement, Maintenance and Operation.

(1) No Change.

(2) (a) through (j) No Change.

~~(k) The permittee shall use erosion and sediment control best management practices, in strict compliance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C., to prevent violations of state water quality standards;~~

~~(k)~~ ~~(j)~~ This general permit authorizes dredging and filling for the replacement, modification or maintenance of a bridge and approaches for a specific crossing of a wetland or other surface water. Replacement of a bridge or modification of a bridge that includes changes in the configuration of the bridge or fill areas due to changes in materials, construction techniques, or meeting current construction codes or safety standards are authorized under this ~~p~~Permit. Any connecting road expansion or alteration associated with such replacement or modification must be authorized by a separate general or individual permit under Chapter 40E-4, 40E-40, or 40E-400, F.A.C., as applicable, before the start of construction; and

~~(l)~~ ~~(m)~~ This general permit does not authorize replacement or modification of bridges or approaches which involve the construction of additional traffic lanes.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.118, 373.413, 373.414, 373.416, 373.426 FS. History—New 10-3-95, Amended 9-9-07, 12-1-11.

40E-400.447 General Permit for Minor Activities Within Existing Rights-of-Way or Easements.

(1) No Change.

(2) This general permit shall be subject to the following specific conditions:

~~(a) The permittee shall use erosion and sediment control best management practices in strict compliance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988), incorporated by reference in Rule 40E-4.091, F.A.C., to prevent violation of state water quality standards.~~

(a) ~~(b)~~ Immediately following completion of slope construction, the fill areas and any disturbed banks of wetlands or other surface waters shall be stabilized with vegetation or riprap to prevent erosion. Temporary erosion controls for all exposed soils within wetlands and other surface waters shall be completed within ~~7~~ seven calendar days of the most recent construction activity. Prevention of erosion of exposed earth into wetlands and other surface waters is a construction priority and completed slopes shall not remain unstabilized while other construction continues.

(b) ~~(e)~~ In addition to complying with the notice provisions of Rule 40E-400.211, F.A.C., at least 90 days prior to commencement of construction, the permittee shall provide written notification to the appropriate District Service Center of the date the permitted construction activities are planned to begin and within 90 days following completion of construction the permittee shall provide written notification to the appropriate District Service Center of the date construction activities are completed.

(c) ~~(d)~~ The permittee shall limit stream channel relocation to streams which have an average annual discharge of 10 cfs ~~cubic feet per second~~ or less. The length of relocated channels or those significantly altered shall be limited to 200 feet per stream. A stream channel shall be altered only when such a measure will reduce the long term adverse water quality impacts and will maintain or restore the stream's natural hydraulic capability.

(d) ~~(e)~~ This general permit shall not apply to ditch construction in Class I or Class II surface waters, Outstanding National Resource Waters or waters designated as Outstanding Florida Waters.

(3) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.118, 373.413, 373.414, 373.416, 373.426 FS. History—New 10-3-95, Amended 6-26-02, 9-9-07, 12-1-11.

40E-400.470 Noticed General Permit for Temporary Agricultural Activities.

(1)(a) through (e) No Change.

(f) No works or farming activities shall occur within 50 feet of a wetland as defined in Section 373.019(~~25~~) (~~22~~), F.S. If wetlands are located within the project area, a minimum 50-foot undisturbed buffer must be maintained around the wetland;

(g) through (q) No change.

(2) through (5) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118 FS. Law Implemented 120.60, 373.118, 373.119, 373.413, 373.416, 373.418, 373.423 FS. History— New 9-6-01, Amended 12-1-11.

40E-400.475 General Permit for Minor Activities.

(1) through (2) No Change.

(3) Persons wishing to qualify for this general permit may file an application electronically ~~must file a written or electronic request~~ at the District's e-Permitting website, or South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, or at any of the District's Service Centers, describing the proposed activities and providing plans and other information necessary to evaluate the potential for adverse impacts from the proposed activities. The addresses and phone numbers of the District's Service Centers are available at www.sfwmd.gov, "Locations." Any persons proposing a system described in paragraph (1)(e)

(1)(f) above, shall submit tax parcel information or other documentation, sufficient to establish that the property is not part of a tract of land that was divided into two or more parcels after July 1, 1994. The District will provide notification in writing or by electronic mail to the applicant whether the proposed activity qualifies for this general permit within 30 days of submittal of the written or electronic request. The proposed activity may not commence until the District has provided notice in writing or by electronic mail that the applicant qualifies for the general permit.

(4) through (6) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118, 668.003, 668.004, 668.50 FS. Law Implemented 373.118, 373.413, 373.416, 373.426, 668.003, 668.004, 668.50 FS. History—New 10-3-95, Amended 10-1-06, 12-1-11.

40E-400.487 General Permit to the Department to Change Operating Schedules for Department or District Water Control Structures.

(1) A general permit is hereby granted to the Department to change the operating schedules for existing water control structures that are owned or operated by the Department or the District when such changes are for the purpose of environmental restoration or enhancement.

(2) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.118, 373.416 FS. History—New 10-3-95, Amended 12-1-11.

40E-400.500 General Permit for Construction, Operation, Maintenance, Alteration, Removal or Abandonment of Minor Silvicultural Surface Water Management Systems.

(1) No Change.

(2) No construction, operation, maintenance (including repair or replacement), alteration, abandonment, or removal of the minor silvicultural surface water management system described in subsection (1) of this section, shall commence until a completed Notice of Intent to Construct a Minor Silvicultural System (Form No. 0974), is received by the District or said Notice of Intent is properly addressed and stamped and deposited in the United States mail, in which case the postmark date shall be the date of receipt. Form No. 0974, effective date December 2011, is incorporated by reference herein and available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406.

Applicants may also submit annual schedules of proposed silvicultural surface water management systems that meet the requirements of this chapter, including completed permit applications for each activity. The construction, operation, maintenance, alteration, abandonment or removal shall only be authorized when the Notice of Intent is received by the District and provided the proposed activity qualifies for the general permit pursuant to this section and the conditions of issuance are followed.

(3) through (4) No Change.

(5) (a) through (g) No Change.

(h) In addition to the performance standards set forth in paragraphs (a)-(g) above, the applicant, in undertaking the activities authorized herein, must utilize the best management practices set forth in "~~Silviculture~~ Best Management Practices for Silviculture Manual" (2003) (1993) published by the Division of Forestry, Florida Department of Agriculture and Consumer Services.

(i) No Change.

(6) No Change.

PROPOSED EFFECTIVE DATE: December 1, 2011

Rulemaking Authority 373.044, 373.113, 373.118, 403.067(7)(d) FS. Law Implemented 373.118, 373.413, 373.416, 373.426, 403.067(7)(d) FS. History—New 10-3-95, Amended 12-1-11.

EXCERPTS OF AMENDMENTS TO BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS WITHIN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT - December 1, 2011

1.1 Objectives - Under Part IV of Chapter 373, F.S., and Chapters 40E-4, 40E-40, and 40E-400, F.A.C., the District is responsible for the permitting of construction, alteration, operation, maintenance, removal and abandonment of surface water management systems within its jurisdictional boundaries. The objective of this document is to identify the permit review criteria and information used by District staff when reviewing permit applications.

The objective of the permit application review process is to insure that the permit authorizes activities which are not harmful to the water resources of the District and are not inconsistent with water resource objectives of the District. This document has been adopted by reference in paragraph Rule 40E-4.091(1)(a), F.A.C.

1.2 Application Review Process - The District issues four ~~three~~ types of environmental resource permits: conceptual approvals and individual permits pursuant to Chapter 40E-4, F.A.C., ~~and standard permits pursuant to Chapter 40E-40, F.A.C., and general permits (standard, no notice or noticed) pursuant to Chapter Chapters 40E-40 and 40E-400, F.A.C.~~ Conceptual and individual mitigation bank permits are also types of environmental resource permit. Although the processes for these three permits differ administratively, District staff review submitted information in the same manner, using the same basic technical procedures.

1.2.1 Application Form - An applicant for an environmental resource individual, standard, or general permit for the construction, alteration, operation, maintenance, removal and abandonment of a surface water management system, including dredging and filling, shall supply all information identified in Rules 40E-4.101, 40E-40.112, or 40E-400.211, F.A.C., as applicable to the specific project. The District welcomes the submittal of any additional information which the applicant feels will assist the District with its review. Since review time is dependent on information sufficiency, it is to the applicant's benefit to timely submit information to allow application review to proceed without delay. District staff is ~~are~~ available on request for non-binding, pre-application meetings to offer assistance in application preparation.

1.3 Criteria Objectives - The criteria contained herein were established with the primary goal of meeting District water resource objectives as set forth in Chapter 373, F.S. Performance criteria are used where possible. Other methods of meeting overall objectives and which meet the conditions for issuance set forth in Rules 40E-4.301 and 40E-4.302, F.A.C., will be considered by staff or presented to the District Governing Board, or its designee, for consideration. Compliance with the criteria herein constitutes a presumption that the project proposal is in conformance with the conditions for issuance set forth in Rules 40E-4.301 and 40E-4.302, F.A.C.

2.10 "Endangered species" - Those animal species which are listed in Rule 68A-27.003, F.A.C. (as amended December 16, 2003), and those plant species which are listed as endangered in 50 C.F.R. 17.12 (as amended April 8, 2004), when such plants are found to be located in a wetland or other surface water.

2.35 "Staff Report" - A written report prepared by District Staff advising the Governing Board, or its designee, of its conclusions and recommendations based on review of an application. The description of the project in the staff report shall take precedence over application data contained in District permit files, since numerous project changes are often made by applicants during application processing, the results of which may only be reflected in the staff report. Staff reports may be prepared for General Permits. In addition, staff reports serve as notice of proposed agency action.

4.1 Wetlands and other Surface Waters - Wetlands are important components of the water resource because they often serve as spawning, nursery and feeding habitats for many species of fish and wildlife, and because they often provide important flood storage, nutrient cycling, detrital production, recreational and water quality functions. Other surface waters such as lakes, ponds, reservoirs, other impoundments, streams, rivers and estuaries also often provide such functions, and in addition may provide flood conveyance, navigation and water supply functions to the public. Not all wetlands or other surface waters provide all of these functions, nor do they provide them to the same extent. A wide array of biological, physical and chemical factors affect the functioning of any wetland or other surface water community. Maintenance of water quality standards in applicable wetlands and other surface waters is critical to their ability to provide many of these functions.

Unless exempted by statute or rule, permits are required for the construction, alteration, operation, maintenance, abandonment and removal of systems so that the District can conserve the beneficial functions of these communities. The term "systems" includes dredged or filled areas. When used in section 4.0 of the Basis of Review, "wetlands and other surface waters" means those areas as delineated pursuant to the methodology in Chapter 62-340, F.A.C. as ratified in section 373.4211, F.S., and incorporated by reference in paragraph 40E-4.091(1)(g), F.A.C.

4.1.1 Environmental Conditions for Issuance The District addresses the conservation of these beneficial functions in the permitting process by requiring applicants to provide reasonable assurances that the following conditions for issuance of permits, set forth in ~~Rules Sections~~ 40E-4.301 (~~Conditions for Issuance~~) and 40E-4.302 (~~Additional Conditions for Issuance~~), F.A.C., are met. Applicants must provide reasonable assurance that:

- (a) ~~A~~ regulated activity will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters (paragraph 40E-4.301(1)(d), F.A.C.) (see subsection 4.2.2);
- (b) ~~A~~ regulated activity located in, on, or over wetlands or other surface waters, will not be contrary to the public interest, or if such an activity significantly degrades or is located within an Outstanding Florida Water, that the regulated activity will be clearly in the public interest (paragraph 40E-4.302(1)(a), F.A.C.) (see subsections 4.2.3 through 4.2.3.7);
- (c) ~~A~~ regulated activity will not adversely affect the quality of receiving waters such

that the water quality standards set forth in chapters 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including any anti-degradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated (paragraph 40E-4.301(1)(e), F.A.C.).

- (d) ~~A~~ regulated activity located in, adjacent to or in close proximity to Class II waters or located in waters classified by the Department as approved, restricted, or conditionally restricted for shellfish harvesting as set forth in Chapter ~~5L-1~~ ~~16R-7~~, F.A.C., will comply with the additional criteria in subsection 4.2.5 of the Basis of Review (paragraph 40E-4.302(1)(c), F.A.C.);
- (e) ~~T~~he construction of vertical seawalls in estuaries and lagoons will comply with the additional criteria in subsection 4.2.6 of the Basis of Review; (paragraph 40E-4.302(1)(d), F.A.C.)
- (f) ~~A~~ regulated activity will not cause adverse secondary impacts to the water resources (paragraph 40E-4.301(1)(f), F.A.C.) (see subsection 4.2.7);
- (g) ~~A~~ regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters (paragraph 40E-4.302(1)(b), F.A.C.) (see subsections 4.2.8 through 4.2.8.2)

4.2.1 Elimination or Reduction of Impacts - The degree of impact to wetland and other surface water functions caused by a proposed system, whether the impact to these functions can be mitigated and the practicability of design modifications for the site, as well as alignment alternatives for a proposed linear system, which could eliminate or reduce impacts to these functions, are all factors in determining whether an application will be approved by the District. Design modifications to reduce or eliminate adverse impacts must be explored, as described in subsection 4.2.1.1. Any adverse impacts remaining after practicable design modifications have been implemented may be offset by mitigation as described in subsections 4.3 – ~~4.3.8~~ ~~4.3.9~~. An applicant may propose mitigation, or the District may suggest mitigation, to offset the adverse impacts caused by regulated activities as identified in sections 4.2 - 4.2.8.2. To receive District approval, a system cannot cause a net adverse impact on wetland functions and other surface water functions which is not offset by mitigation.

4.2.1.2 The District will not require the applicant to implement practicable design modifications to reduce or eliminate impacts when:

- (a) ~~T~~he ecological value of the function provided by the area of wetland or other surface water to be adversely affected is low based on site specific analysis using the factors in subsection 4.2.2.3, and the proposed mitigation will provide greater long term ecological value than the area of wetland or other surface water to be adversely affected, or
- (b) ~~T~~he applicant proposes mitigation that implements all or part of a plan that provides regional ecological value and that provides greater long term ecological value than the area of wetland or other surface water to be adversely affected.

4.2.2 Fish, Wildlife, Listed Species and their Habitats - Pursuant to paragraph 4.1.1(a), an applicant must provide reasonable assurances that a regulated activity will not impact the values

of wetland and other surface water functions so as to cause adverse impacts to:

- (a) ~~T~~he abundance and diversity of fish, wildlife and listed species; and
- (b) ~~T~~he habitat of fish, wildlife and listed species.

In evaluating whether an applicant provided reasonable assurances under subsection 4.2.2, de minimis effects shall not be considered adverse impacts for the purposes of this subsection.

As part of the assessment of the impacts of regulated activities upon fish and wildlife and their habitats, the District will provide a copy of all notices of applications for standard, general, individual, and conceptual approval permits which propose regulated activities in, on or over wetlands or other surface waters to the Florida ~~Game and Fresh Water~~ Fish and Wildlife Conservation Commission for review and comment. In addition, the District staff may solicit comments from the Florida ~~Game and Fresh Water~~ Fish and Wildlife Conservation Commission regarding other applications to assist in the assessment of potential impacts to wildlife and their habitats, particularly with regard to listed wildlife species. Where proposed activities have a potential to impact listed marine species, the District will provide a copy of the above-referenced types of applications to the Department of Environmental Protection, Office of Protected Species.

The need for a wildlife survey will depend upon the likelihood that the site is used by listed species, considering site characteristics and the range and habitat needs of such species, and whether the proposed system will impact that use such that the criteria in subsection 4.2.2 - 4.2.2.3 and subsection 4.2.7 will not be met. As part of assessing the likelihood of use of a site by listed species, the District will consult scientific literature. Survey methodologies employed to inventory the site must provide reasonable assurances regarding the presence or absence of the subject listed species.

4.2.2.1 Compliance with subsections 4.2.2 - 4.2.3.7, 4.2.5 - 4.3.8 will not be required for regulated activities in isolated wetlands less than one half acre in size, unless:

- (a) ~~T~~he wetland is used by threatened or endangered species.
- (b) ~~T~~he wetland is located in an area of critical state concern designated pursuant to Chapter 380, F.S., or
- (c) ~~T~~he wetland is connected by standing or flowing surface water at seasonal high water level to one or more wetlands, and the combined wetland acreage so connected is greater than one half acre.
- (d) ~~T~~he District establishes that the wetland to be impacted is, or several such wetlands to be impacted are, cumulatively, of more than minimal value to fish and wildlife based on the factors in subsection 4.2.2.3.

4.2.2.3 The assessment of impacts expected as a result of proposed activities on the values of functions that any wetland or other surface water provides to fish, wildlife, and listed species will be based on a review of pertinent scientific literature, ecologic and hydrologic information, and field inspection. When assessing the value of such functions, the factors which the District will consider are:

- (a) Condition - this factor addresses whether the wetland or other surface water is in a high quality state or has been the subject of past alterations in hydrology, water quality, or vegetative composition. However, areas impacted by activities in violation of a District or Department rule, order, or permit adopted or issued pursuant to Chapter 373, F.S. or Part VIII, Chapter 403, F.S. (1984, as amended),

- will be evaluated as if the activity had not occurred.
- (b) Hydrologic connection - this factor addresses the nature and degree of off-site connection which may provide benefits to off-site water resources through detrital export, base flow maintenance, water quality enhancement or the provision of nursery habitat.
 - (c) Uniqueness - this factor addresses the relative rarity of the wetland or other surface water and its floral and faunal components in relation to the surrounding regional landscape.
 - (d) Location - this factor addresses the location of the wetland or other surface water in relation to its surroundings. In making this assessment, the District will consult reference materials such as the Florida Natural Areas Inventory, Local Government Comprehensive Plans, and maps created by governmental agencies identifying lands with high ecological value.
 - (e) Fish and wildlife utilization - this factor addresses use of the wetland or other surface water for resting, feeding, breeding, nesting or denning by fish and wildlife, particularly those which are listed species.

4.2.2.4 ~~Water Quantity Impacts to Wetlands and Other Surface Waters~~ Pursuant to paragraph 4.1.1(a), an applicant must provide reasonable assurance that the regulated activity will not change the hydroperiod of a wetland or other surface water, so as to adversely affect wetland functions or other surface water functions as follows:

- (a) Whenever portions of a system, such as constructed basins, structures, stormwater ponds, canals, and ditches, are reasonably expected to have the effect of reducing the depth, duration or frequency of inundation or saturation in a wetland or other surface water, the applicant must perform an analysis of the drawdown in water levels or diversion of water flows resulting from such activities and provide reasonable assurance that these drawdowns or diversions will not adversely impact the functions that wetlands and other surface waters provide to fish and wildlife and listed species.
- (b) Increasing the depth, duration, or frequency of inundation through changing the rate or method of discharge of water to wetlands or other surface waters or by impounding water in wetlands or other surface waters must also be addressed to prevent adverse effects to functions that wetlands and other surface waters provide to fish and wildlife and listed species. Different types of wetlands respond differently to increased depth, duration, or frequency of inundation. Therefore, the applicant must provide reasonable assurance that activities that have the potential to increase discharge or water levels will not adversely affect the functioning of the specific wetland or other surface water subject to the increased discharge or water level.
- (c) Whenever portions of a system could have the effect of altering water levels in wetlands or other surface waters, applicants shall be required to: monitor the wetland or other surface waters to demonstrate that such alteration has not resulted in adverse impacts; or calibrate the system to prevent adverse impacts. Monitoring parameters, methods, schedules, and reporting requirements shall be specified in permit conditions.

4.2.3 Public Interest Test - In determining whether a regulated activity located in, on, or over surface waters or wetlands is not contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the regulated activity is clearly in the public interest, the District shall consider and balance, and an applicant must address, the following criteria:

- (a) Whether the regulated activity will adversely affect the public health, safety, or welfare or the property of others (subparagraph 40E-4.302(1)(a)1., F.A.C.);
- (b) Whether the regulated activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats (subparagraph 40E-4.302(1)(a)2., F.A.C.);
- (c) Whether the regulated activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling (subparagraph 40E-4.302(1)(a)3., F.A.C.);
- (d) Whether the regulated activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity (subparagraph 40E-4.302(1)(a)4., F.A.C.);
- (e) Whether the regulated activity will be of a temporary or permanent nature (subparagraph 40E-4.302(1)(a)5., F.A.C.);
- (f) Whether the regulated activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of section 267.061, F.S. (subparagraph 40E-4.302(1)(a)6., F.A.C.); and
- (g) The current condition and relative value of functions being performed by areas affected by the proposed regulated activity (subparagraph 40E-4.302(1)(a)7., F.A.C.).

4.2.3.1 Public Health, Safety, or Welfare or the Property of Others. In reviewing and balancing the criterion regarding public health, safety, welfare and the property of others in paragraph 4.2.3(a), the District will evaluate whether the regulated activity located in, on, or over wetlands or other surface waters will cause:

- (a) An environmental hazard to public health or safety or improvement to public health or safety with respect to environmental issues. Each applicant must identify potential environmental public health or safety issues resulting from their project. Examples of these type of issues include: mosquito control; proper disposal of solid, hazardous, domestic or industrial waste; aids to navigation; hurricane preparedness or cleanup; environmental remediation, enhancement or restoration; and similar environmentally related issues. For example, the installation of navigational aids may improve public safety and may reduce impacts to public resources.
- (b) Impacts to areas classified by the Department as approved, conditionally approved, restricted or conditionally restricted for shellfish harvesting. Activities which would cause closure or a more restrictive classification or management plan for a shellfish harvesting area would result in a negative factor in the public interest balance with respect to this criterion.
- (c) Flooding or alleviate existing flooding on the property of others. There is at least a neutral factor in the public interest balance with respect to the potential for causing or alleviating flooding problems if the applicant meets the water quantity

criteria in section six of this Basis of Review.

- (d) Eenvironmental impacts to the property of others. For example, the construction of a ditch that results in drawdown impacts to a wetland on an adjacent property would be an environmental impact to the property of others. The District will not consider impacts to property values or taxes.

4.2.3.3 Navigation, Water Flow, Erosion and Shoaling - In reviewing and balancing the criterion on navigation, erosion and shoaling in paragraph 4.2.3(c), the District will evaluate whether the regulated activity located in, on or over wetlands or other surface waters will:

- (a) Significantly impede navigability or enhance navigability. The District will consider the current navigational uses of the surface waters and will not speculate on uses which may occur in the future. Applicants proposing to construct bridges or other traversing works must address adequate horizontal and vertical clearance for the type of watercraft currently navigating the surface waters. Applicants proposing to construct docks, piers and other works which extend into surface waters must address the continued navigability of these waters. An encroachment into a marked or customarily used navigation channel is an example of a significant impediment to navigability. Applicants proposing temporary activities in navigable surface waters, such as the mooring of construction barges, must address measures for clearly marking the work as a hazard to navigation, including nighttime lighting. The addition of navigational aids may be beneficial to navigation. If an applicant has a U.S. Coast Guard permit issued pursuant to 14 U.S.C. Section 81 (1993), 33 C.F.R. Section 62 (1993) for a regulated activity in, on or over wetlands or other surface waters, submittal of this permit with the application may assist the applicant in addressing this criterion.
- (b) Cease or alleviate harmful erosion or shoaling. Applicants proposing activities such as channel relocation, artificial reefs, construction of jetties, breakwaters, groins, bulkheads and beach renourishment must address existing and expected erosion or shoaling in the proposed design. ~~Compliance with erosion control best management practices referenced in the Florida Development Manual: A Guide to Sound Land and Water Management (1988) will be an important consideration in addressing this criterion.~~ Each permit will have a general condition which requires applicants to utilize appropriate erosion control practices and to correct any adverse erosion or shoaling resulting from the regulated activities.
- (c) Significantly impact or enhance water flow. Applicants must address obstructions to sheet flow by assessing the need for structures which minimize the obstruction such as culverts or spreader swales in fill areas. Compliance with the water quantity criteria found in subsection 4.2.2.4 shall be an important consideration in addressing this criterion.

4.2.3.4 Fisheries, Recreation, Marine Productivity - In reviewing and balancing the criterion regarding fishing or recreational values and marine productivity in paragraph 4.2.3(d), the District will evaluate whether the regulated activity in, on, or over wetlands or other surface waters will cause:

- (a) Aadverse effects to sport or commercial fisheries or marine productivity. Examples of activities which may adversely affect fisheries or marine productivity

are the elimination or degradation of fish nursery habitat, and change in ambient water temperature, change in normal salinity regime, reduction in detrital export, change in nutrient levels or other adverse affects on populations of native aquatic organisms.

- (b) Aadverse effects or improvements to existing recreational uses of a wetland or other surface water. Wetlands and other surface waters may provide recreational uses such as boating, fishing, swimming, skiing, hunting and birdwatching. An example of potential adverse effects to recreational uses is the construction of a traversing work, such as a road crossing a waterway, which could impact the current use of the waterway for waterskiing and boating.

4.2.4.1 Short Term Water Quality Considerations - The applicant must address the short term water quality impacts of a proposed system, including:

- (a) Providing turbidity barriers or similar devices for the duration of dewatering and other construction activities in or adjacent to wetlands or other surface waters.
- (b) Stabilizing newly created slopes or surfaces in or adjacent to wetlands and other surface waters to prevent erosion and turbidity.
- (c) Providing proper construction access for barges, boats and equipment to ensure that propeller dredging and rutting from vehicular traffic does not occur.
- (d) Maintaining construction equipment to ensure that oils, greases, gasoline, or other pollutants are not released into wetlands or other surface waters.
- (e) Controlling the discharge from spoil disposal sites.
- (f) Preventing any other discharge or release of pollutants during construction or alteration that will cause water quality standards to be violated.

4.2.4.2 Long Term Water Quality Considerations - The applicant must address the long term water quality impacts of a proposed system, including:

- (a) The potential of a constructed or altered water body to violate water quality standards due to its depth or configuration. For example, the depth of water bodies must be designed to insure proper mixing so that the water quality standard for dissolved oxygen will not be violated in the lower levels of the water body, but the depth should not be so shallow that the bottom sediments are frequently resuspended by boat activity. Water bodies must be configured to prevent the creation of debris traps or stagnant areas which could result in violations of state water quality standards.
- (b) Long term erosion, siltation or propeller dredging that will cause turbidity violations.
- (c) Prevention of any discharge or release of pollutants from the system that will cause water quality standards to be violated.

4.2.4.4 Temporary Mixing Zones - A temporary mixing zone for water quality during construction or alteration may be requested by the applicant. The District shall review such request pursuant to Rules sections 62-4.242 and 62-4.244(5), F.A.C., in accordance with the Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S. adopted by reference in paragraph Section 40E-4.091(1)(c), F.A.C.

4.2.5 Class II Waters; Waters Approved for Shellfish Harvesting - The special value and importance of shellfish harvesting waters to Florida's economy as existing or potential sites of commercial and recreational shellfish harvesting and as a nursery area for fish and shellfish is recognized by the District. In accordance with paragraph 4.1.1(d), the District shall:

- (a) Deny a permit for a regulated activity in Class II waters which are not approved for shellfish harvesting unless the applicant submits a plan or proposes a procedure to protect those waters and waters in the vicinity. The plan or procedure shall detail the measures to be taken to prevent significant damage to the immediate project area and the adjacent area and shall provide reasonable assurance that the standards for Class II waters will not be violated;
- (b) Deny a permit for a regulated activity in any class of waters where the location of the system is adjacent or in close proximity to Class II waters, unless the applicant submits a plan or proposes a procedure which demonstrates that the regulated activity will not have a negative effect on the Class II waters and will not result in violations of water quality standards in the Class II waters; and
- (c) Deny a permit for a regulated activity that is located directly in Class II or Class III waters which are classified as approved, restricted, conditionally approved or conditionally restricted for shellfish harvesting. This provision shall not apply to maintenance dredging of navigational channels, the construction of shoreline protection structures, the installation of transmission and distribution lines for carrying potable water, electricity or communication cables in rights-of-way previously used for such lines, for clam and oyster culture, and for private, single family boat docks that meet the following criteria for installation in such waters:
 1. There shall be no more than two boats moored at the dock;
 2. No overboard discharges of trash, human or animal waste, or fuel shall occur at the dock;
 3. Any non-water dependent structures, such as gazebos or fish cleaning stations, shall be located on the uplands;
 4. Prior to the mooring of any boat at the dock, there shall be existing structures with toilet facilities located on the uplands;
 5. Any proposed shelter shall not have enclosed sides;
 6. The mooring area shall be located in waters sufficiently deep to prevent bottom scour by boat propellers; and
 7. Any structures located over grassbeds shall be designed so as to allow for the maximum light penetration practicable.

4.2.6 Vertical seawalls - The construction of vertical seawalls in estuaries or lagoons is prohibited unless one of the following conditions exists:

1. The proposed construction is located within a port as defined in Section 315.02, F.S., or Section 403.021, F.S.;
2. The proposed construction is necessary for the creation of a marina, the vertical seawalls are necessary to provide access to watercraft, or the proposed construction is necessary for public facilities;
3. The proposed construction is to be located within an existing manmade canal and the shoreline of such canal is currently occupied in whole or in part by vertical seawalls; or

4. The proposed construction is to be conducted by a public utility when such utility is acting in the performance of its obligation to provide service to the public.

(b) No Change.

4.2.7 Secondary Impacts - Pursuant to paragraph 4.1.1(f), an applicant must provide reasonable assurances that a regulated activity will not cause adverse secondary impacts to the water resource, as described in paragraphs (a) through (d), below. Aquatic or wetland dependent fish and wildlife are an integral part of the water resources which the District is authorized to protect under Part IV, Chapter 373, F.S. Those aquatic or wetland dependent species which are listed as threatened, endangered or of special concern and the Bald Eagle (*Haliaeetus leucocephalus*), which is protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), are particularly in need of protection.

A proposed system shall be reviewed under this criterion by evaluating the impacts to: wetland and surface water functions identified in subsection 4.2.2.3, water quality, upland habitat for Bald Eagle (*Haliaeetus leucocephalus*), aquatic or wetland dependent listed species, and historical and archaeological resources. De minimis or remotely related secondary impacts will not be considered. Applicants may propose measures such as preservation to prevent secondary impacts. Such preservation shall comply with the land preservation provisions of subsection 4.3.8. If such secondary impacts can not be prevented, the applicant may propose mitigation measures as provided for in subsections 4.3 through 4.3.8 ~~4.3.9~~. This secondary impact criterion consists of the following four parts:

- (a) No Change.
- (b) An applicant shall provide reasonable assurance that the construction, alteration, and intended or reasonably expected uses of a system will not adversely impact the ecological value of uplands to Bald Eagles (*Haliaeetus leucocephalus*) and aquatic or wetland dependent listed animal species for enabling existing nesting or denning by these species, but not including:
 1. Areas needed for foraging; or
 2. Wildlife corridors, except for those limited areas of uplands necessary for ingress and egress to the nest or den site from the wetlands or other surface water;

Table 4.2.7-1 identifies those aquatic or wetland dependent listed species that use upland habitats for nesting or denning.

For those aquatic or wetland dependent listed animal species for which habitat management guidelines have been developed by the U.S. Fish and Wildlife Service (USFWS) or the Florida Fish and Wildlife Conservation Commission (FWC), compliance with these guidelines will provide reasonable assurance that the proposed system will not adversely impact upland habitat functions described in paragraph (b). For those aquatic or wetland dependent listed animal species for which habitat management guidelines have not been developed or in cases where an applicant does not propose to use USFWS or FWC habitat management guidelines, the applicant may propose measures to mitigate adverse impacts to upland habitat functions described in paragraph (b), provided to aquatic or

wetland dependent listed animal species. Secondary impacts to the functions of wetlands or uplands for nesting of Bald Eagles (*Haliaeetus leucocephalus*) will not be considered adverse if the applicant holds a valid permit pursuant to paragraph 68A-16.002(1)(a), F.A.C. (May 15, 2008), or a valid authorization as described in paragraph 68A-16.002(1)(c), F.A.C. (May 15, 2008) for the same activities proposed by the applicant under Part IV of Chapter 373, F.S., or if the applicant demonstrates compliance with the FWC Eagle Management Guidelines incorporated by reference in Rule 68A-16.002, F.A.C. (May 15, 2008).

- (c) No Change.
- (d) An applicant shall provide reasonable assurance that the following future activities will not result in water quality violations or adverse impacts to the functions of wetlands and other surface waters as described in subsection 4.2.2.:
 1. Additional phases or expansion of the proposed system for which plans have been submitted to the District or other governmental agencies; and
 2. Oen-site and off-site activities regulated under Part IV, Chapter 373, F.S., or activities described in section 403.813(2), F.S., that are very closely linked and causally related to the proposed system.

As part of this review, the District will also consider the impacts of the intended or reasonably expected uses of the future activities on water quality and wetland and other surface water functions.

In conducting the analysis under paragraph (d)2., above, the District will consider those future projects or activities which would not occur but for the proposed system, including where the proposed system would be considered a waste of resources should the future project or activities not be permitted.

Where practicable, proposed systems shall be designed in a fashion which does not necessitate future impacts to wetland and other surface water functions. If future phases or project expansion have the potential to cause adverse secondary impacts, applicants must provide sufficient conceptual design information to provide reasonable assurance that these impacts can be successfully eliminated or offset.

System expansions and future system phases will be considered in the secondary impact analysis, and if the District determines that future phases of a system involve impacts that appear not to meet permitting criteria, the current application shall be denied unless the applicant can provide reasonable assurance that those future phases can comply with permitting criteria. One way for applicants to establish that future phases or system expansions do not have adverse secondary impacts is for the applicant to obtain a conceptual approval permit for the entire project.

(The District proposes to move Table 4.2.7-1 here)

4.3 Mitigation – Protection of wetlands and other surface waters is preferred to destruction and mitigation due to the temporal loss of ecological value and uncertainty regarding the ability to recreate certain functions associated with these features. Mitigation will be approved only after the applicant has complied with the requirements of subsection 4.2.1 regarding practicable modifications to eliminate or reduce adverse impacts. However, any mitigation proposal

submitted by an applicant shall be reviewed concurrently with the analysis of any modifications pursuant to subsection 4.2.1. This section establishes criteria to be followed in evaluating mitigation proposals.

Mitigation as described in sections 4.3 – ~~4.3.8~~ 4.3.9 is required only to offset the adverse impacts to the functions as identified in sections 4.2 - 4.2.9. caused by regulated activities. In certain cases, mitigation cannot offset impacts sufficiently to yield a permissible project. Such cases often include activities which significantly degrade Outstanding Florida Waters, adversely impact habitat for listed species, or adversely impact those wetlands or other surface waters not likely to be successfully recreated.

Applicants are encouraged to consult with District staff in pre-application conferences or during the application process to identify appropriate mitigation options.

4.3.1.2 In general, mitigation is best accomplished when located on-site or in close proximity to the area being impacted. Off-site mitigation will only be accepted if adverse impacts are offset and the applicant demonstrates that:

- (a) On-site mitigation opportunities are not expected to have comparable long-term viability due to such factors as unsuitable hydrologic conditions or ecologically incompatible existing adjacent land uses or future land uses identified in a local comprehensive plan adopted according to Chapter 163, F.S.; or
- (b) Off-site mitigation would provide greater improvement in ecological value than on-site mitigation.

One example of a project that would be expected to meet the criteria of paragraphs (a) or (b) above is a linear project which cannot effectively implement on-site mitigation due to documented right-of-way constraints.

4.3.1.7 Mitigation or reclamation required or approved by other agencies for a specific project will be acceptable to the District to the extent that such mitigation or reclamation fulfills the requirements of sections 4.3-~~4.3.8~~ 4.3.9 and offsets adverse impacts of the same project in accordance with the criteria in sections 4.2-4.2.8.2

4.3.3.1 Applicants shall provide reasonable assurance that proposed mitigation will:

- (a) Offset adverse impacts due to regulated activities; and
- (b) Achieve mitigation success by providing viable and sustainable ecological and hydrological functions.

4.3.7 Financial Responsibility for Mitigation - As part of compliance with paragraph 40E-4.301(1)(j), F.A.C., where an applicant proposes mitigation, the applicant shall provide proof of financial responsibility to:

- (a) Conduct the mitigation activities;
- (b) Conduct any necessary management of the mitigation site;
- (c) Conduct monitoring of the mitigation; and
- (d) Conduct any necessary corrective action indicated by the monitoring.

4.3.7.6 Financial Responsibility Mechanisms - Financial responsibility for the mitigation, monitoring and corrective action for the project may be established by any of the following methods, at the discretion of the applicant:

- (a) Performance bond (Form No. 1105), effective date December 2011, incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.;
- (b) Irrevocable letter of credit (Form No. 1106), effective date December 2011, incorporated by reference in paragraph 40E-4.091(1)(a);
- (c) Trust fund agreement;
- (d) Deposit of cash or cash equivalent into an escrow account;
- (e) An audited annual financial statement submitted by a Certified Public Accountant representing that the applicant has a tangible net worth equal to or in excess of the cost of the mitigation plan. For purposes of this subparagraph, "tangible net worth" means total assets, not including intangibles such as goodwill and right to patents or royalties, minus total liabilities, computed in accordance with generally accepted accounting principles;
- (f) A demonstration that the applicant meets the financial test and corporate guarantee requirements set forth in 40 C.F.R. Section 264.143(f) incorporated ~~herein~~ by reference in paragraph 40E-4.091(1)(f), F.A.C. Where the referenced test is used to provide evidence of financial resources necessary to conduct mitigation activities the term "closure and post-closure cost estimates" as set forth therein, shall be construed to mean "mitigation cost estimates-";
- (g) guarantee bond;
- (h) insurance certificate; or
- (i) A demonstration that the applicant meets the self-bonding provisions set forth at 30 C.F.R. Section 800.23 incorporated ~~herein~~ by reference in paragraph 40E-4.091(1)(i), F.A.C. Where the referenced provisions are used to provide evidence of financial responsibility to conduct mitigation activities, the term "surface coal mining and reclamation operations," as set forth therein, shall be construed to mean "mitigation activities."

4.3.8 Real Property Conveyances

- (a) All conservation easements and restrictive covenants pursuant to Section 704.06, F.S., shall be granted in perpetuity without encumbrances, unless such encumbrances do not have the potential to adversely affect the ecological viability of the mitigation. All liens against the area preserved pursuant to Section 704.06, F.S., shall be released, subordinated to, or joined with the conservation easement or restrictive covenant. Conservation easements and restrictive covenants shall be consistent with Section 704.06, F.S.; and shall contain restrictions that ensure the ecological viability of the site.
- (b) Plat restrictions proposed to meet the requirements of Section 704.06, F.S., and Section 4.3.2.2 must contain the language contained in Section 704.06(1)(a)-(h), F.S. In order to provide reasonable assurance of the preservation of the protected area in accordance with the permit in perpetuity, plat language shall provide the District a third-party right to enforce the restrictions of Section 704.06, F.S., and shall further provide that the Section 704.06, F.S., plat restrictions cannot be altered, released or revoked without the prior written consent of the District.
- (c) The following conservation easement forms are incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C. ~~herein and are available online at www.sfwmd.gov or can be obtained at no extra cost by contacting the District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-~~

~~2045, ext. 6436 or (561) 682-6436;~~

Form No. 1190, Deed of Conservation Easement (Standard), effective date ~~December 2011~~ January 23, 2007;

Form No. 1191, Deed of Conservation Easement (Standard Passive Recreational), effective date ~~December 2011~~ January 23, 2007;

Form No. 1192, Deed of Conservation Easement (Standard Riparian), effective date ~~December 2011~~ January 23, 2007;

Form No. 1194, Deed of Conservation Easement (Third Party Standard), effective date ~~December 2011~~ January 23, 2007;

Form No. 1195, Deed of Conservation Easement (Third Party Passive Recreational), effective date ~~December 2011~~ January 23, 2007;

Form No. 1196, Deed of Conservation Easement (Third Party Riparian), effective date ~~December 2011~~ January 23, 2007;

Form No. 1197, Restrictive Covenant (Standard), effective date ~~December 2011~~ January 23, 2007;

Form No. 1318, Deed of Conservation Easement (Local Governments), effective date ~~December 2011~~ July 4, 2010.

- (d) All real property conveyances shall be in fee simple and by statutory warranty deed, special warranty deed, or other deed, without encumbrances that adversely affect the integrity of the preservation objectives. The District shall also accept a quit claim deed if necessary to aid in clearing minor title defects or otherwise resolving boundary questions.

4.4.2.1 Use of a Mitigation Bank is appropriate, desirable, and a permissible mitigation option when the Mitigation Bank will offset the adverse impacts of the project; and

- (a) ~~O~~on-site mitigation opportunities are not expected to have comparable long-term viability due to such factors as unsuitable hydrologic conditions or ecologically incompatible existing adjacent land uses or future land uses identified in a local comprehensive plan adopted according to Chapter 163, F.S.; or
- (b) ~~U~~use of the Mitigation Bank would provide greater improvement in ecological value than on-site mitigation.

4.4.3.1 The banker shall provide reasonable assurance that the proposed Mitigation Bank will:

- (a) ~~I~~improve ecological conditions of the regional watershed;
- (b) ~~P~~provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- (c) ~~B~~be effectively managed in ~~perpetuity~~ the long term;
- (d) ~~N~~not destroy areas with high ecological value;
- (e) ~~A~~achieve mitigation success; and
- (f) ~~B~~be adjacent to lands which will not adversely affect the long-term viability of the Mitigation Bank due to unsuitable land uses or conditions.

4.4.3.3 The banker shall:

- (a) ~~H~~have sufficient legal or equitable interest in the property to meet the requirements of section 4.4.9; and
- (b) ~~M~~meeet the financial responsibility requirements of section 4.4.10.

4.4.4.1 A description of the location of the proposed Mitigation Bank which shall include:

- (a) A map at regional scale showing the project area in relation to the regional watershed and proposed mitigation service area;
- (b) A vicinity map showing the project area in relation to adjacent lands and offsite areas of ecologic or hydrologic significance which could affect the long term viability or ecological value of the bank;
- (c) A n aerial photograph identifying boundaries of the project area;
- (d) A highway map showing points of access to the Mitigation Bank for site inspection; and
- (e) A legal description of the proposed Mitigation Bank.

4.4.4.3 A description and assessment of current site conditions which shall include:

- (a) A soils map of the project area;
- (b) A topographic map of the project area and adjacent hydrologic contributing and receiving areas;
- (c) A hydrologic features map of the project area and adjacent hydrologic contributing and receiving areas;
- (d) Current hydrologic conditions in the project area;
- (e) A vegetation map of the project area;
- (f) Ecological benefits currently provided to the regional watershed by the project area;
- (g) A adjacent lands, including existing land uses and conditions, projected land uses according to comprehensive plans adopted pursuant to Chapter 163, F.S., by local governments having jurisdiction, and any special designations or classifications associated with adjacent lands or waters; and
- (h) A disclosure statement of any material fact which may affect the contemplated use of the property.

4.4.4.4 A mitigation plan describing the actions proposed to establish, construct, operate, manage and maintain the Mitigation Bank which shall include:

- (a) Construction-level drawings detailing proposed topographic alterations and all structural components associated with proposed activities;
- (b) Proposed construction activities, including a detailed schedule for implementation;
- (c) The proposed vegetation planting scheme and detailed schedule for implementation;
- (d) Masures to be implemented during and after construction to avoid adverse impacts related to proposed activities;
- (e) A detailed long term management plan comprising all aspects of operation and maintenance, including water management practices, vegetation establishment, exotic and nuisance species control, fire management, and control of access; and
- (f) A proposed monitoring plan to demonstrate mitigation success.

4.4.4.5 An assessment of improvement or changes in ecological value anticipated as a result of proposed mitigation actions which shall include:

- (a) ~~A~~ description of anticipated site conditions in the Mitigation Bank after the mitigation plan is successfully implemented;
- (b) ~~A~~ comparison of current fish and wildlife habitat to expected habitat after the mitigation plan is successfully implemented; and
- (c) ~~A~~ description of the expected ecological benefits to the regional watershed.

4.4.4.7 Draft documentation of financial responsibility meeting the requirements of section 4.4.10, and utilization of the following Mitigation Bank Financial Assurance forms, which are incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C.:

Form No. 1019, effective date December 2011, Mitigation Bank Performance Bond to Demonstrate Construction/Implementation Financial Assurance;

Form No. 1020, effective date December 2011, Mitigation Bank Irrevocable Letter of Credit to Demonstrate Construction/Implementation Financial Assurance;

Form No. 1021, effective date December 2011, Mitigation Bank Standby Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance;

Form No. 1022, effective date December 2011, Mitigation Bank Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance;

Form No. 1023, effective date December 2011, Mitigation Bank Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance;

Form No. 1024, effective December 2011, Mitigation Bank Standby Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance.

4.4.6 Contribution of Lands - A permit applicant may contribute land to a Mitigation Bank if:

- (a) ~~T~~he adverse impacts to be offset by the land donation are within the mitigation service area of the Mitigation Bank, except as provided in Section 4.4.8.4;
- (b) ~~T~~he land will offset adverse impacts of the proposed project;
- (c) ~~T~~he land is adjacent to or will become a District approved Mitigation Bank;
- (d) ~~T~~he land will improve or enhance the ecological value of a District approved Mitigation Bank;
- (e) ~~T~~he land will be encumbered pursuant to the requirements of section 4.4.9; and
- (f) ~~T~~he grantee of the conservation easement or fee simple interest agrees to accept such conveyance.

4.5 Formal Determination of Landward Extent of Wetlands and other Surface Waters -

Pursuant to subsection 373.421(2), F.S., the Governing Board has established a procedure by which a real property owner, an entity that has the power of eminent domain, or any person who has a legal or equitable interest in real property may petition the District for a formal determination for that property. A formal wetland determination means the District will determine the locations on the property of the landward extent (boundaries) of the wetlands and other surface waters defined by Chapter 62-340, F.A.C., as ratified in Section 373.4211, F.S., and incorporated by reference in paragraph 40E-4.091(1)(g), F.A.C.

4.5.1 Procedure - To petition for a formal determination, the petitioner must submit to the District the following:

- (a) ~~F~~our copies of completed [Form No. 0972, Petition for a Formal Wetland and Surface Water Determination](#), effective date December 2011, incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C., including copies of all items required by the form;

and

- (b) ~~T~~he appropriate non-refundable formal determination fee pursuant to section 40E-1.607, F.A.C.

Within 30 days of receipt of a petition for a formal determination, the District shall notify the petitioner of any missing or insufficient information in the petition documentation submitted which may be necessary to complete review of the petition.

The District shall complete the determination and shall issue a notice of intended agency action within 60 days after the petition is deemed complete. The District shall publish the notice of intended agency action on the petition in a newspaper of general circulation in the county or counties where the property is located.

Sections 120.57 and 120.569, F.S., apply to formal determinations made pursuant to this section. Any person whose substantial interests will be affected by the District's proposed action on the petition may request an administrative hearing on the proposed action pursuant to section 40E-1.511, F.A.C. If no request for an administrative hearing is filed, the Executive Director will then take final action on the petition for the formal determination.

The Executive Director will only issue a formal determination if the petitioner has satisfied all the requirements of section 4.5. A person requesting a formal determination may withdraw the petition without prejudice at any point before final agency action.

5.1 State Standards - Projects shall be designed and operated so that off-site discharges will meet State water quality standards, as set forth in Chapter 62-302, F.A.C. Florida Administrative Code.

5.2.2 Land Use and Coverage Criteria –

(a) Commercial or industrial zoned projects shall provide at least one half inch of dry detention or retention pretreatment as part of the required retention / detention, unless reasonable assurances can be offered that hazardous materials will not enter the project's surface water management system. Such assurances include, for example, deed restrictions on property planned for re-sale, type of occupancy, recorded lease agreements, local government restrictive codes, ordinances, licenses, and engineered containment systems.

(b) Projects having greater than 40% impervious area and which discharge directly to the following receiving waters shall provide at least one half inch of dry detention or retention pretreatment as part of the required retention/detention. Receiving waters being addressed are:

1. Lake Okeechobee and the Kissimmee River.
2. Water bodies designated as Class I or Class II waters by the Florida Department of Environmental Protection.
3. Canals back-pumped to Lake Okeechobee or to the Conservation areas, or proposed for back-pumping.
4. Other areas, such as the Savannas in St. Lucie and Martin Counties; the Six Mile Cypress Strand; the Big Cypress area of Collier County; and lands acquired by the District pursuant to Section 373.59, F.S. Florida Statutes, Water Management Lands Trust Fund (Save Our Rivers); mitigation bank lands, as set forth in Section 4.4.
5. Outstanding Florida Waters as defined in Chapter 62-302, F.A.C. Florida Administrative Code; and Aquatic Preserves as created and provided for in Chapter 258, F.S.

Florida Statutes.

6. Water bodies within a District permitted public water supply wellfield cone-of-depression which are not separated from the aquifer by strata at least ten feet thick and having an average saturated hydraulic conductivity of less than 0.1 foot per day; where the cone-of-depression is defined by one of the following:

a. in those areas of the District where no local wellfield protection ordinance has been adopted by the local governing body, the one foot drawdown line as expressed in the water table aquifer under conditions of no rainfall and 100 days of pumpage at the permitted average daily pumpage rate (where significant canal recharge is indicated, canal recharge representative of a 1 in 100 year drought will be considered);

b. Chapter 27, Article XIII, Wellfield Protection Ordinance, Broward County Code of Ordinances, last amended September 28, 1999. Broward County Wellfield Protection Ordinance contour for Zone 3 (Broward County Wellfield Protection Ordinance 84-60, as incorporated into Broward County Code Chapter 27, Article XIII, enacted in August 1984). This information is hereby incorporated published by reference in paragraph 40E-4.091(1)(a), F.A.C. and incorporated into this rule.

c. Dade County Wellfield Protection Ordinance contour showing maximum limits (Section 24-43 ~~24-12.1~~ Protection of Public Potable Water Supply Wells; Chapter 24 Environmental Protection; Code of Metropolitan Dade County, Florida). This information is incorporated hereby published by reference in paragraph 40E-4.091(1)(a), F.A.C. and incorporated into this rule.

(c) Water surface and roofed areas can be deducted from site areas only for water quality pervious/impervious calculations. The water surface area meeting dimensional criteria may also be subtracted from the total site area when making final water quality treatment volume calculations.

(d) In cases of widening existing urban public highway projects, the District shall reduce the water quality requirements, if the applicant provides documentation which demonstrates that all reasonable design alternatives have been considered, and which provides evidence that the alternatives are all cost-prohibitive.

(e) Projects located within cones of depression - Retention/detention area locations shall not reduce hydraulic recharge distances to public water supply wells in excess of 2 percent, nor shall wet retention/detention areas be closer to public water supply wells than 300 feet.\

5.5 Sewage Treatment Percolation Ponds – Above ground percolation pond dikes shall not be within 200 feet of water management lakes or 100 feet of dry retention/detention areas, or the applicant must provide reasonable assurance that effluent will not migrate into the water management lakes or detention areas. Reasonable assurance may be provided by:

(a) Documentation of volume and rate of application of effluent to the percolation ponds, and

(b) Submittal of net flow analyses.

5.9.4 The reason for the monitoring requirement will be stated in the Staff Report for each Permit. Also included in the permit will be the monitoring and reporting schedules and the parameters of interest. Each monitoring program will be designed specifically for the land use or individual project in question and will include applicable surface and ground water sampling. Staff shall specify applicable project specific parameters such as those listed in Chapter 62-302, F.A.C. The applicant shall use a ~~Florida Department of Environmental Protection~~ or Florida

Department of Health and Rehabilitative Services-certified laboratory for all water quality ~~sampling and analysis. The District recommends that the applicant submit final results from the laboratory on a DOS formatted 3.5" computer disk which will be supplied by the District. The disk will contain a program requiring the input of all pertinent data associated with the water quality monitoring special condition(s). If the permittee or their contracted laboratory does not have MS-DOS computer capabilities, water quality analysis may be submitted on paper.~~ Examples of records to be supplied are as follows: sample date, sample location with D for discharge or N for no discharge, water discharge rates (cfs) and concentration values of indicated elements or compounds, date and time of analysis.

5.10 Solid Waste Facilities –

- (a) Surface water management systems for Class I and II solid waste facilities, as defined by Chapter 62-701, F.A.C., shall be so designed, constructed, and operated as to maintain the integrity of the landfill at all times (during construction, operation, closure and post closure). Applicant must provide assurances that:
 - 1. ~~A~~ll flows will be conveyed at non-erosive velocities,
 - 2. ~~T~~he project is designed to minimize erosion.
- (b) Design features in support of this requirement include features such as:
 - 1. ~~S~~lopes adequate to promote runoff but not affect slope stability,
 - 2. ~~I~~ntermediate benches or swales which reduce runoff velocities and limit erosion,
 - 3. ~~V~~egetation of closed portion of landfill.
- (c) Class I and II landfill projects shall provide adequate assurance that leachate will not enter the surface water management system. This assurance may be provided through affirmative demonstration that the requirement of Chapter 62-701, F.A.C. for design and emplacement of liners, leachate collection systems, and treatment and disposal of leachate will be met.
- (d) Borrow pits shall not be included in the surface water management system unless the applicant can affirmatively demonstrate that leachate will not enter the borrow pit, and that the water quality standards in Chapters 62-4 and 62-302, F.A.C. will be met.
- (e) Dewatering operations at active, unlined landfills will not be permitted.
- (f) For Class I and II landfills the District shall require additional Best Management Practices, such as:
 - 1. Detention in excess of the quantities stated in Section 5.2.
 - 2. Dry detention areas.
 - 3. Dry conveyance swales with adequate dimensions to permit maintenance.
 - 4. Filter mechanisms for additional water quality enhancement prior to discharge.
 - 5. Skimmers in front of discharge structures to restrict discharge of floatable materials.
 - 6. Screw gates on water control structures capable of restricting discharge of poor quality surface water.
 - 7. Vegetation of appropriate portions of the water management system, such as conveyance swales.

- (g) To provide information for assessing the need for Best Management Practices at a specific site, District staff will require a hydrogeologic investigation that shall, at a minimum, provide information on:
 1. The hydrogeologic properties of the formations underlying the landfill, including aquifer and characteristics, groundwater elevations and direction and rate of groundwater flow,
 2. Location of existing wells within one-half mile of the site perimeter,
 3. Locations and specifications of existing or proposed monitor wells,
 4. The location and chemical composition of any known leachate plumes.
- (h) Applicants should consult with District staff prior to or at pre-application Technical Advisory Committee meetings to determine the specific requirements which will apply for a particular project.

6.2 Discharge Rate – Off-site discharge rate is limited to rates not causing adverse impacts to existing off-site properties, and:

- (a) Historic discharge rates, or
- (b) Rates determined in previous District permit actions, or
- (c) Rates specified in District criteria (see Appendix 2).

6.9 Minimum Drainage –

- (a) Residential projects shall have systems with the calculated ability to discharge by surface flow or subsurface percolation at least 3/8 inch per day during or subsequent to the storm of the allowable discharge frequency and duration, so that lowering of the water surface elevations within the water management system to the maximum depth compatible with the environmental protection or other constraints as described in 6.10, will occur in 12 days or less.
- (b) 1. Commercial and industrial projects to be subdivided for sale, where the initial permittee will not build the entire system, are required to have installed by the initial permittee, as a minimum,
 - a. The required water quality system for one inch of runoff detention or one half inch of runoff retention in the master system for the total developed site. The individual sites must provide the remainder (2.5" x % impervious - one inch) which may be in exfiltration trench. The master system must be in a legally defined common area. The master system cannot utilize exfiltration trench.
 - b. Aa stormwater collection and conveyance system to interconnect the retention/detention system with the outfall, with access points to the system available to each individual lot or tract. The system shall be sized to limit discharge under design conditions to the allowable discharge.
- 2. Projects permitted in such manner will require deed restrictions which identify to lot or tract purchasers:
 - a. The amount of additional on-site storm water management system necessary to provide flood protection for specific design events,
 - b. Any additional retention/detention required for water quality purposes, and

- c. The assumed per cent impervious, or impervious area used in design calculations.

6.12 Lake-Wetland Separation – Lakes which potentially may adversely affect wetland areas shall be separated from the wetland preservation, creation, or restoration areas by a minimum distance as determined by the following criteria:

- (a) A separation distance (shortest distance between the wetland jurisdictional line and the edge of water in the proposed water body at the proposed control elevation) producing a gradient less than or equal to 0.005 using the difference in the elevation of the jurisdictional boundary of the wetland and the basin control elevation to calculate the driving head. Staff will consider elevations differing from the jurisdictional boundary of the wetland to calculate the driving head. The applicant will be required to submit monitoring data or other relevant hydrologic data from the site to substantiate the reason for using a different starting elevation. Existing conditions alone will not be considered sufficient reason to use a different elevation if there is evidence that activities on or adjacent to the project site may be responsible for lowering water tables which may be currently having an adverse impact on the subject wetlands. In these cases, preservation of the wetlands cannot be assured by simply maintaining the existing conditions.
- (b) If the gradient resulting from any separation distance and the driving head as defined above is between 0.005 and 0.015, then calculations will be required which demonstrate that the drawdown in the adjacent wetland(s) will be of a magnitude which will not result in adverse impacts on the wetland. A drawdown of more than 12 vertical inches in a 90-day period with no recharge shall be presumed to be an adverse impact.
- (c) If the gradient is equal to or greater than 0.015, then construction of an impermeable barrier or other equivalent action must be taken to mitigate for the impact of the proposed excavation between the wetland and the excavation.
- (d) The District will review modeling results which demonstrate that a gradient equal to or greater than 0.015 will not have an adverse impact on the adjacent wetland. Model input data shall be derived from a detailed soil profile constructed from a minimum of three separate sampling locations with permeability testing results on selected samples. Two-dimensional modeling may be necessary to represent the site geometry.

9.2.4 The Association must have the following covenants and restrictions, which shall be set forth in the Declaration of Protective Covenants, Deed Restrictions, Declaration of Condominium, or other recorded document which sets forth the Association's rules and regulations:

- (a) That it is the responsibility of the Association to operate and maintain the surface water management system.
- (b) The surface water management system is owned by the Association or described therein as common property.
- (c) That there be a method of assessing and collecting the assessment for operation and maintenance of the surface water management system.
- (d) That any proposed amendment to the association's documents, which would affect

the surface water management system (including environmental conservation areas and the water management portions of the common areas) must be submitted to the District for a determination of whether the amendment necessitates a modification of the environmental resource or surface water management permit. If a modification is necessary, the District will so advise the permittee. The amendment affecting the surface water management system may not be finalized until any necessary permit modification is approved.

- (e) That the rules and regulations be in effect for at least 25 years with automatic renewal periods thereafter.
- (f) If wetland mitigation monitoring will be required and the operational entity will be responsible to carry out this obligation, the rules and regulations shall state that it will be the association's responsibility to complete the task successfully, including meeting all conditions associated with mitigation maintenance and monitoring.
- (g) A Notice of Environmental Resource Permit or Surface Water Management Permit Form No. 1189, incorporated by reference in subsection 40E-4.101(2), F.A.C., shall be recorded in the public records of the County(s) where the property is located. The Registered Agent for the Association shall maintain copies of all permitting actions for the benefit of the association.
- (h) The District has the right to take enforcement action, including a civil action for an injunction and penalties, against the association to compel it to correct any outstanding problems with the surface water management system facilities or in mitigation or conservation areas under the responsibility or control of the association.

]10.1 Construction Completion Certification

- (a) Within 30 days of completion of the surface water management system construction, a Florida licensed professional engineer shall certify that the construction was completed and that the system was constructed in substantial conformance with the plans and specifications approved by the District. The above requirement shall be met by submittal of a completed and executed Environmental Resource/Surface Water Management Permit Construction Completion Certification Form No. 0881A, effective date December 2011, incorporated by reference in paragraph 40E-4.361(1)(b), F.A.C., or equivalent.
- (b) The District recognizes that Form No. 0881A does not apply to all water management systems. If Form No. 0881A does not apply to a particular system, then a certification confirming the constructed dimensions of that system, such as lengths, diameters and elevations must be provided. The following certification statement must also appear on the certification report:

I HEREBY NOTIFY THE DISTRICT OF THE COMPLETION OF CONSTRUCTION OF ALL THE COMPONENTS OF THE SURFACE WATER MANAGEMENT FACILITIES FOR THE ABOVE REFERENCED PROJECT AND CERTIFY THAT THEY HAVE BEEN CONSTRUCTED IN SUBSTANTIAL CONFORMANCE WITH THE PLANS AND SPECIFICATIONS PERMITTED BY THE DISTRICT. [A COPY OF THE APPROVED PERMIT DRAWINGS IS ATTACHED WITH DEVIATIONS NOTED, IF APPLICABLE.] I HEREBY AFFIX MY SEAL THIS ____ DAY OF _____, _____. (REFERENCE 373.117,

373.419 F.S.)

- (c) If no deviations are detected by the certifying engineer, copies of the approved permit drawings need not be submitted.
- (d) The District will accept Environmental Resource/Surface Water Management Permit Construction Completion Certification Form No. 0881B, effective date December 2011, incorporated by reference in paragraph 40E-4.361(1)(b), F.A.C., or equivalent, for surface water management systems with wet retention/detention areas for projects permitted prior to October 3, 1995 provided that:
 1. Existing side slopes are no steeper than 2:1 (horizontal:vertical) from top of bank out to a minimum depth of two feet below the control elevation, except at headwalls, and/or other structural connections;
 2. The surface water management system currently functions as intended, consistent with the permitted surface water management system, including level of water quality treatment, level of flood protection, and storm attenuation;
 3. The wet retention/detention area side slopes have been adequately maintained and stabilized to support the operation of the surface water management system;
 4. All other components and facilities associated with the permitted surface water management system are certified as being constructed in substantial conformance with the plans and specifications permitted by the District;
 5. Form 0881B is signed and sealed by a Florida licensed Professional Engineer.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
OFFICE OF COUNSEL**

Proposed Rule: Is a SERC Required

Division (choose from drop-down list):

Rule (number & description): See attached list

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

I. Adverse Impact Determination

a. Economic? (Check all that apply.)

- Increased fees to be paid by licensee, applicant, registrant, etc.
- Increased costs of doing business (equipment, software, etc.)
- Increased personnel costs (additional employees, insurance, overtime, training, etc.)
- Decreased opportunity for profit (limits on fees, scope of business/practice, ability to partner with others, etc.)

b. Non-economic? (Check all that apply.)

- Increased time and effort to comply (forms, tests, etc.)
- Increased need for specialized knowledge (legal, technical, etc.)

If any of the above boxes are checked, answer "Yes," then continue to the next section. If no boxes are checked, answer "No," and skip to Section III below. Yes No

II. Small Business Determination

a. Are any of the affected entities a "small business?" (Check all that apply.)

- 200 or less **permanent full-time** employees;
- Net worth less than \$5 million (including value of affiliates);
- Independently owned and operated (NOT a subsidiary of another entity); **AND,**
- Engaged in a commercial enterprise?

If **ALL** of the preceding boxes are checked, answer "Yes," and skip to Section III below. If you did not check **ALL** of the above boxes, check "No," then continue to the next qualification.

Yes No

b. Small Business Certification

- Does any affected entity have Small Business Administration 8(a) certification?
 Yes (see, www.ccr.gov) No

If the answers to I and II are "Yes," the agency must prepare a SERC.

III. Regulatory Cost Increase Determination

Direct: a. Increased Regulatory Cost: None

b. Number of Entities Impacted: Rule modifications will apply to all entities

that use SFWMD rules but there will be no negative economic impact.

c. Multiply a. times b.:

d. Is c. greater than \$200,000? Yes No

Indirect: e. Any ascertainable indirect costs? Yes No

f. Amount of Indirect Cost: None

g. Number of Entities Impacted: Rule modifications will apply to all entities that use SFWMD rules but there will be no negative economic impact.

h. Multiply g. times f.:

i. Is h. greater than \$200,000? Yes No

j. Is h. plus c. greater than \$200,000? Yes No

If the answer to d., i., or j. is "Yes," the agency must prepare a SERC.

Prepared By (type name):

Date (type date): July 15, 2011

To be certified by the agency head, if the agency is within the purview of the Governor; otherwise, certified by the agency's legal counsel or other appropriate person.

Is a SERC required? Yes No, but one has been prepared and is included

Name: Susan Roeder Martin
(Print Name)

Susan Roeder Martin
(Signature)

Title: Senior Specialist Attorney

Date: 7/26/11

Phone: (561) 682-6251

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Statement Of Estimated Regulatory Costs (SERC)

Division:

Board: South Florida Water Management District Governing Board

Rule Number: See attached list

Rule Description: See attached list

Contact Person: Susan Roeder Martin, Esq. (561) 682-6251

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

- | | | |
|--|------------------------------|--|
| 1. Is the rule likely to reduce personal income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the rule likely to reduce total non-farm employment? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the rule likely to reduce private housing starts? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the rule likely to reduce visitors to Florida? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the rule likely to reduce wages or salaries? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Is the rule likely to reduce property income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Explanation:

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

- | | | |
|---|------------------------------|--|
| 1. Is the rule likely to raise the price of goods or services provided by Florida business? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the rule likely to add regulation that is not present in other states or markets? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Statement Of Estimated Regulatory Costs (SERC)

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

Yes No

4. Is the rule likely to cause Florida businesses to reduce workforces?

Yes No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

Yes No

6. Is the rule likely to make illegal any product or service that is currently legal?

Yes No

Explanation:

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule? None

1. Current one-time costs
2. New one-time costs
3. Subtract 1 from 2
4. Current recurring costs
5. New recurring costs
6. Subtract 4 from 5
7. Number of times costs will recur in 5 years
8. Multiply 6 times 7
9. Add 3 to 8

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Statement Of Estimated Regulatory Costs (SERC)

If 9. is greater than \$1 million, there is likely an increase of regulatory costs in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule. *(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*

Everyone that relies on the SFWMD's rules, however, there will not be an economic impact.

2. A general description of the types of individuals likely to be affected by the rule.

All permit applicants, government agencies and the general public.

E. Good faith estimates (costs):

1. Cost to the SFWMD of implementing the proposed rule:

None. The SFWMD intends to implement the proposed rule within its current workload, with existing staff.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

None.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

3. Cost to the SFWMD of enforcing the proposed rule:

None. The SFWMD intends to enforce the proposed rule within its current workload with existing staff.

Minimal. *(Provide a brief explanation).*

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Statement Of Estimated Regulatory Costs (SERC)**

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

None.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. *(Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).*

None.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S.

It is anticipated that the proposed rule revision will have no economic affect on small businesses and small cities. Individuals and entities, including government entities, and other uses of the SFWMD's 40E administrative rules will benefit from the use of more accurate and up-to-date rule references and corrected forms, as well as the replacement of illegible maps.

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Statement Of Estimated Regulatory Costs (SERC)

that has an unincarcerated population of 10,000 or less according to the most recent decennial census.”

The estimated number of small businesses that would be subject to the rule:

1-99

100-499

500-999

1,000-4,999

More than 5,000

Unknown, please explain: *The proposed rules will be utilized by all small businesses that rely on the SFWMD's 40E administrative rules, however, there will be no adverse economic affect.*

Analysis of the impact on small business:

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

None.

Additional.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "B".

Adopted in entirety.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Statement Of Estimated Regulatory Costs (SERC)**

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "C".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "D".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "E".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

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SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Statement Of Estimated Regulatory Costs (SERC)

- [40E-1.021](#): Definitions
- [40E-1.5095](#): Publication of Notice of Agency Decision or Intended Agency Decision
- [40E-1.603](#): Application Procedures for Conceptual Approval, Individual and General Permits
- [40E-1.6058](#): Publication and Requests for Notification of Permit Applications or Notices of Intent
- [40E-1.6065](#): Consideration of Intended Agency Decision on Permit Applications
- [40E-1.607](#): Permit Application Processing Fees
- [40E-1.6107](#): Transfer of Environmental Resource, Surface Water Management, or Water Use Permit
- [40E-1.615](#): Coordinated Agency Review Procedures for the Florida Keys Area of Critical State Concern
- [40E-1.659](#): Forms and Instructions
- [40E-4.011](#): Policy and Purpose
- [40E-4.021](#): Definitions
- [40E-4.041](#): Permits Required
- [40E-4.0415](#): Permit Thresholds
- [40E-4.042](#): Formal Determination of Wetlands and Other Surface Waters
- [40E-4.051](#): Exemptions From Permitting
- [40E-4.091](#): Publications, Rules and Interagency Agreements Incorporated by Reference
- [40E-4.101](#): Content of Permit Applications
- [40E-4.201](#): Forms and Instructions
- [40E-4.205](#): Permit Application Processing Fees
- [40E-4.301](#): Conditions for Issuance of Permits
- [40E-4.302](#): Additional Conditions for Issuance of Permits
- [40E-4.303](#): Environmental Resource Permit Authorization
- [40E-4.305](#): Conceptual Approvals
- [40E-4.311](#): Variances from Specified Review Criteria for Environmental Resource Permits
- [40E-4.321](#): Duration of Permits
- [40E-4.331](#): Modification of Permits
- [40E-4.361](#): Conversion from Construction Phase to Operation Phase
- [40E-4.381](#): General Conditions
- [40E-40.010](#): Review of Environmental Resource Standard General Permit Applications
- [40E-40.011](#): Policy and Purpose
- [40E-40.031](#): Implementation
- [40E-40.041](#): Permit Thresholds
- [40E-40.042](#): Standard General Permit for Incidental Site Activities
- [40E-40.051](#): Standard General Permit Authorization
- [40E-40.061](#): Delegation of Authority Pertaining to General Environmental Resource Permits, General Surface Water Management Permits and Associated Sovereign Submerged Lands Authorizations
- [40E-40.091](#): Publications, Rules and Interagency Agreements Incorporated by Reference
- [40E-40.141](#): Request for Additional Information

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Statement Of Estimated Regulatory Costs (SERC)

[40E-40.302](#): Conditions for Issuance of Permits

[40E-40.321](#): Duration of Permits

[40E-40.331](#): Modification of Permits

[40E-40.341](#): District Revocation or Modification of Permits

[40E-40.381](#): General Conditions

[40E-40.391](#): Forms and Instructions

[40E-41.121](#): Definitions

[40E-41.243](#): Application of Part III

[40E-41.260](#): Content of Application

[40E-41.263](#): Conditions for Issuance of Surface Water Management Permits in the C-51 Basin

[40E-41.265](#): Conditions for Issuance of Right-of-Way Permits in the C-51 Basin

[40E-41.321](#): Definitions

[40E-41.323](#): Water Preserve Area & Water Preserve Area Basin Boundaries

[40E-41.363](#): Conditions for Issuance of Environmental Resource Permits and Surface Water Management Permits in the Water Preserve Area, Water Preserve Area Basin, or Adjacent to the Protective Levees

[40E-400.211](#): Processing Procedures for Noticed General Permits

[40E-400.417](#): General Permit for Construction, Alteration or Maintenance of Boat Ramps and Associated Accessory Docks

[40E-400.443](#): General Permit for Minor Bridge Alteration, Replacement, Maintenance and Operation

[40E-400.447](#): General Permit for Minor Activities Within Existing FDOT Rights-of-Way or Easements

[40E-400.470](#): Noticed General Permit for Temporary Agricultural Activities

[40E-400.475](#): General Permit for Minor Activities

[40E-400.487](#): General Permit to the Department to Change Operating Schedules for Department or District Water Control Structures

[40E-400.500](#): General Permit for Construction, Operation, Maintenance, Alteration, Removal or Abandonment of Minor Silvicultural Surface Water Management Systems