

1 SOUTH FLORIDA WATER MANAGEMENT DISTRICT

2
3 RESOLUTION NO. 2007-__

4
5 A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH
6 FLORIDA WATER MANAGEMENT DISTRICT TO AUTHORIZE
7 ENTERING INTO "OPERATING AGREEMENT UNDER PART IV,
8 CHAPTER 373, F.S., BETWEEN THE SOUTH FLORIDA WATER
9 MANAGEMENT DISTRICT AND THE DEPARTMENT OF
10 ENVIRONMENTAL PROTECTION", PROVIDING AN EFFECTIVE DATE.

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12 WHEREAS, the District and the Florida Department of Environmental Protection
13 (DEP) entered into an operating agreement in 1994, which was then modified in
14 1998.

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16 WHEREAS, the Agreement specifies which agency will review specific types of
17 environmental resource permits and relies on an activity-based division of
18 responsibility.

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20 WHEREAS, all other water management districts (excluding Northwest) are
21 proposing changes to the operating agreement concurrently, with an effective
22 date of July 1, 2007.

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24 BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA
25 WATER MANAGEMENT DISTRICT:

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27 Section 1. The Governing Board of the South Florida Water
28 Management District hereby authorizes entering into the "Operating
29 Agreement Under Part IV, Chapter 373, F.S., between the South
30 Florida Water Management District and the Department of
31 Environmental Protection".

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33 Section 2. This resolution shall take effect on July 1, 2007.

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35 PASSED and ADOPTED this __ day of _____, 2007.

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37 SOUTH FLORIDA WATER MANAGEMENT
38 DISTRICT, BY ITS GOVERNING BOARD

39
40 By:

41 _____
42 Chair

43 ATTEST:

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45 _____
46 Assistant Secretary
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Approved as to form:

BY: _____
Office of Counsel

OPERATING AGREEMENT CONCERNING
REGULATION UNDER PART IV, CHAPTER 373, F.S.,

BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
DEPARTMENT OF ENVIRONMENTAL PROTECTION

I. INTENT

The South Florida Water Management District (DISTRICT) and the State of Florida Department of Environmental Protection (DEPARTMENT) enter into this operating agreement to further streamline environmental permitting, while protecting the environment. This agreement divides responsibility between the DISTRICT and the DEPARTMENT for the exercise of their authority regarding permits, compliance, and enforcement under Part IV, Chapter 373, F.S. This agreement also divides responsibility between the DISTRICT and DEPARTMENT regarding formal wetland determinations pursuant to Subsection 373.421(2) through (5), F.S. It is a goal of this agreement that the division of responsibilities provide no reduction in levels of compliance monitoring and enforcement and, where possible, allow increased levels of compliance monitoring and enforcement.

This agreement supersedes the following agreements: Operating Agreement concerning Management and Storage of Surface Waters Regulation, and Wetland Resource Regulation between South Florida Water Management District and Department of Environmental Regulation, dated October 27, 1992; and First Amendment to October 27, 1992 Operating Agreement concerning Management and Storage of Surface Waters Regulation, and Wetland Resource Regulation between South Florida Water Management District and Department of Environmental Regulation, dated January 18, 1994 and Operating Agreement Concerning Regulation under Part IV, Chapter 373, F.S., between South Florida Water Management District and Department of Environmental Protection dated August 11, 1994; and Operating Agreement Concerning Regulation under Part IV, Chapter 373, F.S., and Aquaculture General Permits under Section 403.814, F.S., between South Florida Water Management District and Department of Environmental Protection dated October 27, 1998 and incorporated by reference into the Basis of Review for Environmental Resource Permits in December 1998.

As a future step to further increase the efficiency and effectiveness of environmental permitting, the DEPARTMENT and the DISTRICT shall jointly pursue further integration and streamlining of federal and state wetlands regulations.

II. RESPONSIBILITIES OF DISTRICT AND DEPARTMENT

A. DEPARTMENT Responsibilities

1. Permits and Variances

The DEPARTMENT shall review and take final action on all applications for permits and petitions for variances, under Part IV, Chapter 373, F.S., and variances or waivers under Section 120.542, F.S., for the project types listed in a. through t. below. The permit applications encompassed within the DEPARTMENT's responsibilities hereunder include those submitted for wetland resource (dredge and fill) permits and management and storage of surface water (MSSW) permits, pursuant to Subsection 373.414(11) through (16), F.S., as well as those submitted for environmental resource permits. –

a. All solid waste management facilities that require a permit under Chapter 403, F.S. However, the DISTRICT shall review and take final action on permit applications when the solid waste management facility qualifies for a solid waste general permit and is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1 of this agreement.

b. Hazardous waste facilities that require a permit under Chapter 403, F.S. However, the DISTRICT shall review and take final action on permit applications when the storage of hazardous waste is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1. of this agreement.

c. Domestic or industrial wastewater treatment, storage, transmission, effluent disposal, or water reuse facilities that require a permit under Chapter 403, F.S., This includes: all facilities and activities located at the domestic or industrial wastewater treatment facility; all reuse sites permitted under Parts II or IV of Chapter 62-610, F.A.C.; land application sites permitted under Part VI of Chapter 62-610, F.A.C.; and wetlands created using reclaimed water (from domestic wastewater or industrial wastewater sources). However, the DISTRICT shall review and take final action on permit applications for:

(1) Water reuse sites permitted under Part III of Chapter 62-610, F.A.C.; such as facilities for the storage and application of reclaimed water to irrigate crops, golf courses, or other landscapes;

(2) Activities involving the application of reclaimed water to rehydrate wetlands or to provide artificial recharge to reduce or mitigate drawdown impacts due to well withdrawals;

(3) Those facilities that are subject to any of the requirements of Chapters 40E-4, 40E-40, 40E-41, F.A.C., through a system or activity which is not fully contained

on the domestic or industrial wastewater facility site, but which is part of a larger project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1. of this agreement;

(4) Those facilities that qualify for a general or generic permit pursuant to Rules 62-660.801, F.A.C. (General Permit for a Wastewater Disposal System for a Laundromat, 62-660.802, F.A.C. (General Permit for a Pesticide Waste Degradation Systems), 62-660.803, F.A.C. (General Permit for Car Wash Systems), 62-660.805, F.A.C. (General Permit for Disposal of Tomato Wash, or 62-621.300(2), F.A.C. (Generic Permit for Discharge of Produced Ground Water from any Non-Contaminated Site Activity);

(5) Those facilities in which the industrial wastewater component is merely an HVAC (heating, ventilation, and air conditioning) cooling tower discharge, or other industrial wastewater treatment facility which is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1. of this agreement.

d. Potable water facilities that require a permit under Chapter 403, F.S. This includes drinking water treatment plants as well as distribution mains. However, the DISTRICT shall review and take final action on permit applications for distribution lines that are fully contained within systems for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1. of this agreement;

e. All mines, as defined in Chapter 378, F.S. However, the DISTRICT shall review and take final action on permit applications for sand, shell, and clay (other than fuller's earth) mines that do not involve processing other than use of a scalping screen to remove large rocks, wood, and debris; -

f. Power plants and electrical distribution and transmission lines and other facilities related to the production, transmission and distribution of electricity. However, the DISTRICT shall review and take final action on electrical distribution lines fully contained within any larger plan of development for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1 of this agreement;

g. Communication cables and lines. However, the DISTRICT shall review and take final action on communication cables and lines fully contained within any larger plan of development for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1. of this agreement;

h. Natural gas or petroleum exploration, production, and distribution activities and facilities, product pipelines, and other facilities related to the exploration, production, and distribution of natural gas and petroleum. However, the DISTRICT shall review and take final action on natural gas distribution lines fully contained within any

larger plan of development for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1. of this agreement;

i. Docking facilities, boardwalks, shore protection structures and piers, including the adjacent docking and boating related development and navigational dredging. Adjacent docking and boating related development includes parking areas for the docking facility, dry storage facilities, boat sale and supply facilities, maintenance and repair facilities, associated seafood loading and processing facilities, restaurants, harbor master and marina administration facilities. Residential development and other commercial development are not considered docking or boating related. The DISTRICT shall review and take final action on permit applications for all docking facilities, boardwalks, shore protection structures and piers, including adjacent docking and boating related development and navigational dredging, whenever such facilities are part of a larger plan of other commercial or residential development that has received or requires a permit under Part IV of Chapter 373, F.S. The DISTRICT shall also review and take final action on all docking facilities, boardwalks, shore protection structures and piers, including adjacent docking and boating related development and navigational dredging, that are associated with a no-notice general permit under section 40E-400.315, F.A.C. The DISTRICT shall also review and take final action on permit applications for any docking facility, boardwalk, shore protection structure, or pier serving a dwelling unit which is the responsibility of the DISTRICT to review under paragraph n. ;

j. Systems proposed in whole or in part seaward of point 50 feet above the mean high water line at any riparian coastal location fronting the Gulf of Mexico shoreline, exclusive of bays, inlets, rivers, bayous, creeks, passes, and the like. In Monroe, Martin and Collier Counties, where a CCCL has not been established, systems along sandy, non-vegetated shorelines proposed in whole or in part seaward of a point 50 feet above the mean high water line at any riparian coastal location fronting the Gulf of Mexico or Atlantic coast shoreline of the state, exclusive of bays, inlets, rivers, bayous, creeks, passes, and the like;

k. Projects constructed, operated or maintained by the DISTRICT; however, activities of the DISTRICT permitted under Sections 403.91 through 403-929, F.S., or the rules adopted pursuant to those statutes, and activities of the DISTRICT which did not require a permit under such statutes or rules, shall not require a permit under Part IV of Chapter 373, F.S., provided such activities are part of a project which was commenced prior to October 3, 1995. However, the District shall review and take final action on applications pertaining to restoration or enhancement activities conducted on District owned land when the activities are proposed by and will be implemented by a party other than the District as site-specific mitigation for all or part of that party's permit application, notwithstanding that operation and maintenance of the completed activity will be the responsibility of the District;

l. Navigational dredging conducted by governmental entities except where associated with a larger project that is otherwise the responsibility of the DISTRICT for review and final action, and all activities conducted by the U.S. Army Corps of Engineers;

m. Seaports and adjacent seaport related development where the applicant or property owner is a port authority as defined in Subsection 315.02(2), F.S.;

n. A system serving or consisting of up to three contiguous parcels of land under single ownership, where each parcel contains or is proposed to contain only one single family dwelling unit, duplex, triplex, or quadruplex (hereinafter referred to as a dwelling unit), except where the dwelling unit is only an incidental part of a parcel that is otherwise used for agricultural activities for which a permit has been issued or is required under Part IV, Chapter 373, F.S.

o. The following systems in wetlands or other surface waters when they are not part of a larger plan of development for which the DISTRICT reviews and takes final agency action under any other paragraph of this agreement: boat ramps, ski jumps, ski slalom courses, aids to navigation, mooring buoys and fields, piling supported structures which are not physically connected to uplands, aquatic plant management activities regulated under Chapter 369, F.S., fish, attractors, artificial reefs, treasure salvage, archeological research or exploration, and removal of organic detrital material;

p. Temporary systems proposed for commercial film productions;

q. High speed rail facilities under Sections 341.8201 - through 341.842, F.S.;

r. Aquaculture activities not exempt pursuant to Subsection 373.406(8), F.S.;

and

s. All activities on sovereignty submerged lands leased by the Division of Recreation and Parks, except those proposed by the DEPARTMENT.

2. Formal Determinations

The DEPARTMENT shall review and take final action on petitions for formal determinations of the extent of wetlands and other surface waters pursuant to Section 373.421, F.S., filed by entities regarding properties on which they propose to undertake activities for which the DEPARTMENT would have permitting responsibility under this agreement.

The DEPARTMENT shall provide the DISTRICT with copies of formal determinations of the extent of wetlands or other surface waters issued by the DEPARTMENT.

3. Mitigation Banks and Regional Offsite Mitigation Area Agreements (ROMA)

The DEPARTMENT shall review and take final action on all permit applications for mitigation banks and ROMA agreement proposals, under Sections 373.4135 and 373.4136, F.S., filed by one of the following:

- a. Entities proposing to use DISTRICT-owned lands;
- b. Governmental entities, excluding the DEPARTMENT, solely to offset impacts of single-family dwelling units, pursuant to Subsection 373.4135(6), F.S., for which the DEPARTMENT reviews and takes final action under Section II.A.1. of this agreement; and
- c. The DISTRICT.

B. DISTRICT Responsibilities

1. The DISTRICT shall review and take final action on all applications for permits, petitions for variances, and petitions for formal determination under Part IV, Chapter 373, F.S., variances and waivers under Section 120.542, F.S., except for those identified as the DEPARTMENT's responsibility under this agreement, and except as provided in Section II.E of this agreement. The permit applications encompassed within the DISTRICT's responsibility hereunder include those submitted for wetland resource permits and MSSW permits under Subsection 373.414(11) through (16), F.S., as well as those submitted for environmental resource permits.
2. The DISTRICT shall review and take action on projects constructed, operated or maintained by the DEPARTMENT. However, activities of the DEPARTMENT permitted under Section 403.91-403.929, F.S., or the rules adopted pursuant to those statutes, and activities of the DEPARTMENT which did not require a permit under such statutes or rules, shall not require a permit under Part IV of Chapter 373, F.S., provided such activities are part of a project which was commenced prior to October 3, 1995.
3. The DISTRICT shall provide the DEPARTMENT with copies of formal determinations of the extent of wetlands or other surface waters issued by the DISTRICT.

C. Incorrectly Submitted Applications And Petitions; Modifications

1. Permit applications, petitions for variances or waivers, and petitions for formal determinations submitted to the incorrect agency pursuant to the terms of this agreement shall be forwarded to the correct agency for further processing within 10 days of receipt, except where the agencies mutually agree that the application may be retained by the incorrect agency, in which case a special case agreement shall be executed in accordance with Section II.D of this agreement. A refund of any fee submitted to the incorrect agency that does not retain processing of the application shall be made to the applicant. Prior to transferring the application, the incorrect receiving

agency shall coordinate with the proper reviewing agency and the applicant in order to inform all parties that the application has been submitted incorrectly and is being forwarded.

2. Notwithstanding section II.A. and II.B. of this agreement, permit modification requests shall be processed by the agency issuing the original permit. If the permit has been modified, the agency that issued the last modification to the permit shall process the modification. However, the following exceptions apply:

a. The DEPARTMENT shall process all modifications to permits for the following activities:

(1) Solid waste management facilities as described in Section II.A.1.a.;

(2) Mining projects as described in Section II.A.1.d, when the modification involves the addition of new lands to the permit or the expansion of mining activities into areas not previously approved for mining; and

(3) Seaports and seaport related development as described in Section II.A.1.n.

b. Alterations to stormwater systems previously authorized under Rules 17-25.040 or 62-25.040, F.A.C., shall not be considered as modifications under the provisions of this section, and shall be processed by the agency that would have responsibility for reviewing and taking final agency action on the system under Sections II.A. and B. of this agreement.

D. Special Cases

By written agreement between the DISTRICT and the DEPARTMENT, responsibilities may deviate from the responsibilities outlined in II.A., B., or C. above. Instances where this may occur include the following:

1. An extensive regulatory history or a proprietary interest by either the DISTRICT or the DEPARTMENT with a particular project that would make a deviation result in more efficient and effective regulation. This may include activities on lands with a conservation easement held by the other agency;

2. Simplification of the regulation of a project that crosses water management district boundaries;

3. The incorrect agency has begun processing an application or petition and transfer of the application or petition would be inefficient; or

4. Circumstances in which a deviation would result in the application or petition being more efficiently or effectively processed.

The Governing Board may delegate authority to staff to execute special case agreements.

III. DELEGATION OF AUTHORITY: MIXING ZONES, ZONES OF DISCHARGE, VARIANCES

A. The DEPARTMENT delegates authority to the DISTRICT to review and take final action on requests for zones of mixing in surface waters and zones of discharge in groundwater, in accordance with Sections 62-4.242, 62-4.244, 62-28.700, 62-522.400 and 62-522.410, F.A.C., when the requests are associated with a permit application for which the DISTRICT is responsible under the terms of this agreement.

B. The DEPARTMENT delegates the authority to the DISTRICT to take action on petitions for variances or waivers from state water quality standards in accordance with Sections 120.542 and 403.201, F.S., and Section 40C-1.1002 F.A.C., when the petition is associated with a permit application for which the DISTRICT is responsible under the terms of this agreement.

IV. COMPLIANCE MONITORING AND ENFORCEMENT

A. Division of Responsibilities

Each agency shall perform compliance monitoring on all projects for which that agency has issued a permit, consent order, final order, or for which a consent final judgment or final judgment has been entered to determine compliance with the conditions thereof and will enforce said conditions by taking appropriate enforcement action where necessary. However, if the DEPARTMENT or the DISTRICT modifies a permit previously issued by the other agency, pursuant to this agreement, the agency modifying the permit shall thereafter determine compliance with the permit and enforce all provisions or conditions of that permit.

Each agency shall investigate activities regulated under Part IV of Chapter 373, F.S. which are undertaken without the required permits, and take appropriate enforcement action, when it has permitting responsibilities for those activities under this agreement.

When a violation of Part IV of Chapter 373, F.S., also constitutes a violation of Chapters 253 or 258, F.S., and the resolution under Part IV of Chapter 373, F.S., does not resolve the violation under Chapters 253 or 258, F.S., the District shall coordinate compliance and enforcement actions with the DEPARTMENT, and shall forward a copy of the enforcement documentation generated on those violations to the DEPARTMENT for its use in addressing the violation under Chapters 253 or 258, F.S.

B. Special Cases

By written agreement between the DISTRICT and the DEPARTMENT, enforcement responsibilities for specific cases may deviate from the responsibilities outlined in Section IV.A. Instances where this may occur include:

1. The case also includes activities which may be violations of rules of the DEPARTMENT or DISTRICT that are not the subject of this agreement;
2. The case involves activities that cross water management district boundaries;
or
3. Deviation would result in the case being more effectively or efficiently handled.

The Governing Board may delegate authority to staff to execute special case agreements.

V. EMERGENCIES

In a declared emergency, pooling of staff resources and deviations from the terms of this agreement may be in the best interest of the public service and protecting or restoring property and environmental resources. Therefore, notwithstanding the divisions of responsibilities specified in this agreement, where the Governor has issued an Executive Order which declares an emergency and the DEPARTMENT and the DISTRICT have issued emergency orders to implement the Executive Order, either party to this agreement can review and take agency action on any activities regulated under Part IV of Chapter 373, F.S., that are authorized by an emergency order during the duration of the emergency orders of the DEPARTMENT and the DISTRICT.

VI. INTERAGENCY COMMITTEE

In order to seek consistency in the environmental resource permit (ERP) program and to facilitate the implementation of the DEPARTMENT's responsibilities under Subsection 373.026(7), F.S., and Section 62-340.100, F.A.C., the DEPARTMENT and DISTRICT agree to form and participate in an ERP Committee (Committee). The Committee shall meet at least twice a year, but may meet more frequently as issues arise that require interagency coordination. The Committee shall provide a forum for the DEPARTMENT and water management districts to coordinate and communicate regarding the following:

- a. Joint training efforts to maximize the use of training resources and ensure that adequate training is provided.
- b. Promotion of consistent interpretation and implementation of ERP rules.
- c. Proposed amendments to ERP rules.

- d. Development of consistent ERP compliance and enforcement.
- e. Future revisions to the DEPARTMENT and DISTRICT operating agreements regarding the ERP program.
- f. Development of a statewide ERP data set and a computer data exchange methodology.
- g. Such other activities which the committee deems necessary or desirable to achieve and maintain the goals of this agreement.

VII. EFFECTIVE DATE

- A. This agreement shall take effect upon execution by both parties and adoption of rule amendments which incorporate this agreement by reference.
- B. Applications, petitions, and enforcement cases, under Part IV of Chapter 373, F.S., which are pending on the effective date of this agreement shall continue to be processed by the agency to which application or petition was made or which initiate the enforcement case, except when the DISTRICT and the DEPARTMENT agree, and in the case of an aquaculture activity the applicant also agrees, that an application, petition or enforcement case should be transferred in order to provide for more efficient processing and enforcement. Applications and petitions received after the effective date of this agreement will be processed as described in Section II of this agreement.

AGREED TO this _____ day of _____, 2007.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Governing Board Chair
3301 Gun Club Road
West Palm Beach ,FL 33406

Secretary
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Legal Form Approved:

BY: _____

DATE: _____