

## MEMORANDUM

**TO:** Governing Board Members

**FROM:** Chip Merriam, Deputy Executive Director, Water Resources

**DATE:** September 16, 2008

**SUBJECT:** Authorize publication of a Notice of Rulemaking in the Florida Administrative Weekly (FAW) to update Rule 40E-0.105, F.A.C., to allow for additional noticing through electronic media, to amend Rule 40E-0.109, F.A.C., which inadvertently omitted the language allowing for electronic noticing when the original noticing provisions were enacted, and to amend Rule 40E-4.021(13), F.A.C., to include Works of the District permits in the definition of electronic filing.

### Recommendation

Staff recommends Governing Board approval to authorize publication of the Notice of Rulemaking in the Florida Administrative Weekly (FAW) to update Rule 40E-0.105, Florida Administrative Code (F.A.C.) to allow for additional noticing through electronic media, to amend Rule 40E-0.109, F.A.C., which inadvertently omitted the language allowing for electronic noticing when the original noticing provisions were enacted, and to amend Rule 40E-4.021(13), F.A.C., to include Works of the District permits in the definition of electronic filing.

### Background

In 2006, the District adopted rule amendments to allow for noticing, delivery and receipt of documents through electronic media. Notice is provided electronically if the recipient has agreed in advance to accept notice by that method.

The District's electronic noticing has worked well and has resulted in a cost savings to the District. We will therefore expand electronic noticing to include noticing of intended agency decisions and to include Works of the District permits. Additionally, District staff has discovered Rule 40E-0.109, F.A.C., inadvertently omitted the language allowing for electronic noticing when the original noticing provisions were enacted. Therefore, the District seeks authorization to publish a notice of rulemaking to allow for the amendment of these rules to provide for additional noticing through electronic media.

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#### **40E-0.105 Consideration of Intended Agency Decision on Permit Applications.**

(1) After the application for a permit is declared by staff to be complete, if a governing board hearing on the permit application is required, the District shall prepare a Staff Review Summary, which shall contain its recommendations regarding the subject application and which shall constitute intended agency decision. A notice of intended agency decision together with the Staff Review Summary shall be furnished to the applicant and any persons requesting the same pursuant to Rule 40E-1.6058, F.A.C., as applicable. The notice shall state the District Staff's recommendation that the Governing Board approve, deny, or approve with conditions the permit application and the reasons therefore.

(2) The Governing Board shall consider the application for a conceptual approval, individual environmental resource, individual surface water management, or individual water use permit application at its next available regularly scheduled regulatory meeting following the mailing either by regular United States mail or electronic mail of notice of intended agency decision, unless an administrative hearing is requested and granted pursuant to Section 120.569, F.S.

(3) In no case shall agency action be taken later than 90 days after the application for a conceptual approval, individual environmental resource permit, or individual water use permit is declared complete unless waived by the applicant or stayed by the filing of a petition for an administrative hearing. The permit applicant may voluntarily waive the timeline for governing action on the permit application in Section 120.60, F.S., in order to resolve any outstanding issues, including third party objections, regarding the project.

(4) Because the Governing Board may take a final agency action which materially differs from the noticed intended agency action, applicants and other interested persons should be prepared to defend their position regarding the permit application when it is considered by the Governing Board. If the Governing Board takes final agency action which materially differs from the intended agency decision, the District shall mail a notice of the final agency action either by regular United States mail or electronic mail to all persons who were notified of the intended agency decision.

*Specific Authority 120.54(5), 120.60 FS. Law Implemented 120.54(5), 120.60 FS. History--New 7-2-98, Amended\_\_\_\_\_.*

#### **40E-0.109 Point of Entry Into Proceedings and Mediation.**

Point of entry into proceedings determining substantial interests are governed by Rule 28-106.111, F.A.C., and this section.

(1)(a) "Receipt of written notice of agency decision" as set forth in Rule 28-106.111, F.A.C., means receipt of either written notice through regular United States mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action.

(b) If notice is published pursuant to this chapter, publication shall constitute constructive notice to all persons. Until notice is published, the point of entry to request a formal or informal administrative proceeding shall remain open unless actual notice is received.

(2) If the Board takes action which substantially differs from the notice of intended agency decision, the applicant or persons who may be substantially affected shall have an additional point of entry pursuant to Section 28-106.111, F.A.C., unless otherwise provided by law. The Board action is considered to substantially differ from the notice of intended agency decision when the potential impact on water resources has changed.

(3) Notwithstanding Rule 28-106.111, F.A.C., intended agency decisions or agency decisions regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands pursuant to Section 373.427, F.S., shall provide a 14 day point of entry to file petitions for administrative hearing under Rule 28-106.111, F.A.C.

*Specific Authority 120.54(5), 373.044, 373.113 FS. Law Implemented 120.54(5), 120.569, 120.57, 120.60, 373.146, 373.413, 373.427 FS. History--New 7-2-98, Amended 6-12-00, Amended\_\_\_\_\_.*

**40E-4.021 Definitions.**

(13) "Electronic filing" means filing or submission of an Environmental Resource, Surface Water Management ~~Permit or~~ Consumptive Use, or Works of the District Permit Application; Response to Request for Additional Information; or Request for Permit Transfer at the District's e-Permitting website. Electronic filing is governed by the provisions of Chapter 668, F.S. If the applicant or sender of electronic data inhibits the ability of the District to store or print the electronic data, it shall not be considered filed with or received by the District. Filings received by the District after 5:00 p.m. shall be deemed filed on the next regular business day.

*Specific 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, Amended\_\_\_\_\_.*