

## MEMORANDUM

**TO:** Governing Board Members

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

**DATE:** June 15, 2009

**SUBJECT:** Authorize publication of the Notice of Rulemaking in the Florida Administrative Weekly (FAW) to amend Rules 40E-4.021 and 40E-4.091, F.A.C., and the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District (Basis of Review) to implement changes in the listing status of the bald eagle consistent with the Florida Fish and Wildlife Conservation Commission (FFWCC) listing and to update rule citations into the District's rules in coordination with the other water management districts and the Florida Department of Environmental Protection (FDEP).

### Staff Recommendation

Staff recommends Governing Board approval to publish a Notice of Rulemaking to amend Rules 40E-4.021 and 40E-4.091, F.A.C., and the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District (Basis of Review) to implement changes in the listing status of the bald eagle consistent with the FFWCC listing and to update rule citations into the District's rules in coordination with the other water management districts and FDEP.

### Background

Pursuant to Rule 68A-27.0012, F.A.C, on April 9, 2008, the Florida Fish and Wildlife Conservation Commission (FFWCC) adopted a Bald Eagle Management Plan as part of the process for removing the bald eagle from the State of Florida's list of threatened species. The FFWCC has determined that the bald eagle should be removed as a listed species since (1) bald eagles occur throughout the state; (2) the population does not experience extreme fluctuations in distribution or numbers; (3) the estimated number of adults has increased more than 300% during the past three eagle generations; and (4) the population is not projected to experience significant declines over the next three eagle generations. As a result, the FFWCC has finalized the de-listing of the bald eagle through it's April 2008 rule adoption.

The revised FFWCC rules, as well as the proposed changes to the District's rules, will continue to provide protection to the bald eagle in the form of approved management plans that are part of the Environmental Resource Permit or via separate bald eagle permits from FFWCC. These protections will ensure that applicants meet the requirements of the federal Bald and Golden Eagle Protection Act. The provisions of the approved management plans are also consistent with the recently adopted federal rules regarding delisting of bald eagles as well as the currently approved management plans for protection of bald eagles.

The District's Basis of Review includes a table (4.2.7-1) of Listed Wildlife Species that are Aquatic or Wetland Dependent and that use Upland Habitats for Nesting or Denning. Staff recommends that the table be modified to reflect the change in listing status of the bald eagle concurrently with the FFWCC change.

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THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

**40E-4.021 Definitions.**

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

(1) through (28) No change.

(29) "Listed species" means those animal species which are endangered, threatened or of special concern and are listed in Rules 68A-27.003 (as amended December 16, 2003), 68A-27.004 (as amended May 15, 2008), and 68A-27.005 (as amended November 8, 2007), F.A.C., and those plant species listed in 50 Code of Federal Regulation 17.12 (as amended April 8, 2004), when such plants are found to be located in a wetland or other surface water.

(30) through (46) No change.

~~Rulemaking 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,\_\_\_\_\_.

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

(1) The following publications, rules and interagency agreements are incorporated by reference 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 – \_\_\_\_\_7-22-07".

(b) through (k) No change.

(2) No change.

~~Rulemaking Specific 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,\_\_\_\_\_.

# **BASIS OF REVIEW FOR ENVIRONMENTAL RESOURCES PERMIT APPLICATIONS WITHIN SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

## **2.0 Definitions**

2.1 through 2.9 No change.

2.10 “Endangered Species” – Those animal species which are listed in Section 68A-27.003 (as amended December 16, 2003), ~~39-27.003~~, F.A.C., and those plant species which are listed as endangered in 50 Code of Federal Regulations 17.12 (as amended April 8, 2004), when such plants are found to be located in a wetland or other surface water.

2.11 through 2.17 No change.

2.18 “Listed species” – Those animals species which are endangered, threatened or of special concern and are listed in Sections 68A-27.003 (as amended December 16, 2003), 68A-27.004 (as amended May 15, 2008), and 68A-27.005 (as amended November 8, 2007) ~~39-27.003, 39-27.004 and 39-27.005~~, F.A.C., and those plant species listed in 50 Code of Federal Regulation 17.12 (as amended April 8, 2004), when such plants are found to be located in a wetland or other surface water.

2.19 through 2.36 No change.

2.37 “Threatened Species” – Those animal species listed in Section 68A-27.004 (as amended May 15, 2008), ~~39-27.004~~, F.A.C., and those plant species which are listed as threatened in 50 Code of Federal Regulations 17.12 (as amended April 8, 2004), when such plants are found to be located in a wetland or other surface water.

2.38 through 2.39 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; water quality; upland habitat for Bald Eagles (*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 – 4.3.9. This secondary impact criterion consists of the following four parts:

(a) An applicant shall provide reasonable assurance that the secondary impacts from construction, alteration, and intended or reasonably expected uses of a proposed system will not cause violations of water quality standards or adverse impacts to the functions of wetlands or other surface waters, as described in subsection 4.2.2. Impacts such as boat traffic generated by a proposed dock, boat ramp or dry dock facility, which causes an increased threat of collision with manatees; impacts to wildlife from vehicles using proposed roads in wetlands or surface waters; impacts to water quality associated with the use of septic tanks or propeller dredging by boats and wakes from boats; and impacts associated with docking facilities as described in paragraphs 4.2.4.3(f) and (h), will be considered relative to the specific activities proposed and the potential for such impacts. Impacts of groundwater withdrawals upon wetlands and other surface waters that result from the use of wells permitted pursuant to Chapters 40E-2 and 40E-3, F.A.C., shall not be considered under rules adopted pursuant to Part IV, Chapter 373, F.S., since these impacts are considered in the consumptive use permit application process.

Secondary impacts to the habitat functions of wetlands associated with adjacent upland activities will not be considered adverse if buffers, with a minimum width of 15' and an average width of 25', are provided abutting those wetlands that will remain under the permitted design, unless additional measures are needed for protection of wetlands used by Bald Eagle (*Haliaeetus leucocephalus*) for nesting or listed species

for nesting, denning, or critically important feeding habitat. The mere fact that a species is listed does not imply that all of its feeding habitat is critically important. Buffers shall remain in an undisturbed condition, except for drainage features such as spreader swales and discharge structures, provided the construction or use of these features does not adversely impact wetlands. Where an applicant elects not to utilize buffers of the above described dimensions, buffers of different dimensions, measures other than buffers or information may be proposed to provide the required reasonable assurance.

De\_minimis or remotely related secondary impacts such as changes in air quality due to increased vehicular traffic associated with road construction will not be considered unacceptable.

(b) An applicant shall provide reasonable assurance that the construction, alteration, and intended or reasonably expected uses of a proposed 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 and 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) ~~Florida Game and Fresh Water Fish Commission (FGFWFC)~~, 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 ~~FGFWFC~~ 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 Rule 68A-16.002(1)(a), F.A.C. (May 15, 2008) or a valid authorization as described in Rule 68A-16.002(1), F.A.C. (May 15, 2008)<sup>1</sup> 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) through (d) No change.

#### TABLE 4.2.7-1

Listed Wildlife Species That Are Aquatic Or Wetland Dependent  
And That Use Upland Habitats For Nesting Or Denning

#### **Fishes**

##### Species of Special Concern

No change.

#### **Reptiles**

##### Endangered

No change.

##### Threatened

No change.

##### Species of Special Concern

No change.

#### **Birds**

##### Endangered

No change.

##### Threatened

Charadrius alexandrinus tenuirostris (southeastern snowy plover)

Charadrius melodus (piping plover)

Columba leucocephalus (white-crowned pigeon)

Grus canadensis pratensis (Florida sandhill crane)

~~Haliaeetus leucocephala (bald eagle)~~

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Picoides borealis (red-cockaded woodpecker) THIS SPECIES IS WETLAND DEPENDENT ONLY IN LEE, COLLIER, AND CHARLOTTE COUNTIES

Polyborus plancus audubonii (Audubon's crested caracara)

Sterna antillarum (least tern)

Sterna dougallii (roseate tern)

Species of Special Concern

No change.

**Mammals**

Endangered

No change.

Threatened

No change.

Species of Special Concern

No change.

4.3.1.5 To offset adverse secondary impacts from regulated activities to habitat functions that uplands provide to Bald Eagles (*Haliaeetus leucocephalus*) for nesting and to listed species evaluated as provided in paragraph 4.2.7(b), mitigation can include the implementation of management plans, participation in a wildlife mitigation park establish by the FWC ~~FGFWFC~~, or other measures. Measures to offset adverse secondary impacts on wetlands and other surface waters resulting from use of a system can include the incorporation of culverts or bridged crossings designed to facilitate wildlife movement, fencing to limit access, reduced speed zones, or other measures designed to offset the secondary impact.<sup>2</sup>

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## **Statement of Estimated Regulatory Cost**

**For Revisions to Rule 40E-4, F.A.C. (Environmental Resource Permits) and Sections 2.0 (Definitions), 4.2.7 (Secondary Impacts) and 4.3.1 (Types of Mitigation) of the Basis of Review For Environmental Resource Permits Of the South Florida Water Management District**

**May 11, 2009**

## 1. 0 Introduction

The Bald Eagle was recently removed from the Federal Endangered Species list but is still protected under the Federal Bald and Golden Eagle Protection Act. Therefore, appropriate changes are being made by the South Florida Water Management District (District) to citations in the “Listed Species” section of the basis of review to continue protection under the secondary impacts provisions of the Basis of Review for Environmental Resource Permits. The District also proposes to revise and add an option to the actions that can be taken to avoid adverse secondary impacts related to Bald Eagles and their habitat. Previously, an applicant whose proposed activities could cause secondary impacts could either propose mitigation to the District in accordance with section 4.3.1.5 of the Basis of Review (unchanged) or follow the U.S. Fish and Wildlife *Habitat Management Guidelines for the Bald Eagle in the Southeast Region* (Third Revision, January 1987). The proposed revisions continue to allow the proposal of mitigation for adverse secondary impacts. The second option is to follow the guidelines in the Florida Fish and Wildlife Conservation Commission (FWC) *Bald Eagle Management Plan* (April 9, 2008). The third, additional option is to obtain a Bald Eagle permit from the FWC if either mitigation is not proposed to the District or the FWC Bald Eagle Management Plan guidelines are not followed. The second and third options are described in the revised language below.

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 Rule 68A-16.002 (1)(a), F.A.C. (May 15, 2008) or a valid authorization as described in Rule 68A-16.002 (1), 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).

The proposed revisions should pose no significant negative impacts to permit applicants as:

- The District mitigation provisions are unchanged,
- Previous authorizations for proposed activities are recognized,
- The FWC Bald Eagle Management Plan guidelines are significantly less restrictive than the previous US Fish and Wildlife habitat management guidelines (based on the findings of years of monitoring of development activities on Bald Eagles), and
- The permit applicant may obtain an FWC permit when it is more advantageous than the other two options.

An extensive review of the two Bald Eagle management plans indicates that the likelihood of development activities being restricted during nesting season or prohibited at any time is vastly reduced. This reduction of impact on development activities is due primarily to three significant changes:

- The maximum distance from the nest in which activities may be restricted during nesting season or prohibited is reduced from 1,500 feet to 660 feet,
- The recognition of the mitigative effect of visual buffers between the nest and the development activity,
- The recognition that activities of a similar scope and nature to those that already exist near the nest are less likely to cause a disturbance than a new, or larger activity near the nest.

As a result of the above described changes, the incremental transactional costs of the proposed revisions are likely to be zero or to the advantage of the applicant. This SERC is provided for informational purposes only.

**2.0 A Good Faith Estimate of the Number of Individuals and Entities Likely to be Required to Comply with the Rule, together with a General Description of the Types of Individuals Likely to be Affected by the Rule**

Both Environmental Resource Permit (ERP) holders and applicants may be affected by the proposed rule. Applicants will be affected if they seek to obtain an ERP to develop a parcel hosting a Bald Eagle nest. Existing permittees will be affected if they seek to revise their ERP in order to develop or redevelop a parcel hosting Bald Eagle nest. The proposed rule revisions do not apply to Noticed Generals or No Notice General Permits (see 40E-400, F.A.C.).

ArcMap GIS was used in order to identify those permits and applications intersecting Bald Eagle nesting sites. An analysis of the data focused on permits issued in the period January 1, 2003 through December 2, 2008. Table 2.1a and 2.1b (below) show the annual average number of ERPs issued for sites hosting Bald Eagle nests and the permitted acreage. The annual average of ERPs issued with Bald Eagle nests was 12.5. This number is less than one percent of the annual average of total ERPs issued (2,252.5). In any given year, it is estimated that the District will issue between 8 and 17 ERPs affecting sites hosting a Bald Eagle nest. This represents a small fraction of the 2,004 to 2,543 ERPs issued annually by the District. In terms of total acreage associated with permits hosting eagle nests, the acreage ranged from 4,835 to 46,363 per year. The annual average acreage was 22,684.5. This represents less than 5% of the annual average acreage for the total ERPs issued.

**Table 2.1a. ERPs Issued for Sites Hosting Bald Eagle Nests Between January 1, 2003 and December 2, 2008 versus Total ERPs Issued.**

	2003	2004	2005	2006	2007	2008	Total	Annual Average
Total ERPs Issued	2,050	2,155	2,329	2,543	2,434	2,004	13,515	2,252.5
ERP Permits with Bald Eagle Nesting sites	15	17	13	8	13	9	75	12.5
Percent of Total	0.73%	0.79%	0.56%	0.31%	0.53%	0.45%	0.55%	0.55%

**Table 2.1b. Total Acreage of ERPs Issued for Sites Hosting Bald Eagle Nests Between January 1, 2003 and December 2, 2008 versus Total Acreage of All ERPs Issued.**

	2003	2004	2005	2006	2007	2008	Total	Annual Average
Total Acres ERPs Issued	253,667	294,235	360,398	1,196,204	546,878	557,304	3,208,686	534,781
Acreage ERPs with Bald Eagle Nesting Sites	20,636	27,667	6,749	46,363	29,857	4,835	136,107	22,684.5
Percent of Total	8.14%	9.40%	1.87%	3.88%	5.46%	0.87%	4.24%	4.24%

As Table 2.2 (below) shows, the District issued 29% of the ERPs associated with Bald Eagle nesting sites to entities in Osceola County (22).. The remaining 53 ERPs were issued to entities in Collier (9), Highlands (5), Lee (10), Martin (6), Okeechobee (7), Orange (9), Palm Beach (1), Polk (1), and St. Lucie (5).

**Table 2.2. ERPs Issued for Sites Hosting Bald Eagle Nests Between January 1, 2003 and December 2, 2008 by County and Year.**

COUNTY	2003	2004	2005	2006	2007	2008	Total
Collier	4	4				1	<b>9</b>
Highlands		1		2		2	<b>5</b>
Lee	2	2	1		4	1	<b>10</b>
Martin	1	2	1	1	1		<b>6</b>
Okeechobee			2		2	3	<b>7</b>
Orange	2	1	1	1	4		<b>9</b>
Osceola	3	5	8	3	2	1	<b>22</b>
Palm Beach				1			<b>1</b>
Polk						1	<b>1</b>
St Lucie	3	2					<b>5</b>
<b>Total</b>	<b>15</b>	<b>17</b>	<b>13</b>	<b>8</b>	<b>13</b>	<b>9</b>	<b>75</b>

Table 2.3 provides the project descriptions for ERP permits hosting Bald Eagle nests. In terms of numbers of permits with Bald Eagle nests, the largest number of permits with Bald Eagle nests, by land use, is residential (40 permits or 53.33%). The second largest number of permits, by land use, is associated with commercial (9 permits or 12%). In terms of acreage, residential (99,742 acres or 73.29%) and commercial (21,719 acres or 15.97%) are the largest land use types for issued ERPs with Bald Eagle nests.

**Table 2.3 ERPs issued for sites hosting Bald Eagle nests between January 1, 2003 and December 2, 2008 by Land Use.**

ERP Land Use	Count	Percent	Acreage	Percent
Agriculture	3	4.00%	1,434	1.06%
Commercial	9	12.00%	21,719	15.97%
Environmental Restoration	1	1.33%	89	0.00%
Golf Course Development	2	2.67%	5,253	3.87%
Government	3	4.00%	1,017	0.76%
Highway	6	8.00%	3,062	2.26%
Industrial	1	1.33%	913	0.68%
Mitigation	1	1.33%	10	0.00%
Other	1	1.33%	53	0.00%
Public and Institutional	1	1.33%	13	0.00%
Recreation	4	5.33%	44	0.00%
Residential	40	53.33%	99,742	73.29%
Roadway	3	4.00%	2,758	2.04%
<b>Total</b>	<b>75</b>	<b>100.00%</b>	<b>136,107</b>	<b>100.00%</b>

Tables 2.4 lists ERPs by permit type. Most of the permits issued fall under the individual category. The two other types of ERP with the most permits issued were standard generals and wetlands.

**Table 2.4. ERPs issued for parcels hosting Bald Eagle nests between January 1, 2003 and December 2, 2008 by ERP Type.**

ERP Issued Type	Count
ERP INDIVIDUAL	52
ERP STANDARD GENERAL	23
<b>Total ERPs Issued</b>	<b>75</b>

In conclusion, there has not been a significant amount of ERP permitting activity on sites hosting Bald Eagle nests. Annually, since 2003, the District has issued around 12.5 permits with Bald Eagle nests (less than 1% of total). The adoption of a smaller buffer zone may

increase the number of modifications to existing ERPs as more of the land in a project may be developed. The potential increase is not expected to be significant.

### **3.0 Cost to the District and Any Other State and Local Governments**

The proposed revisions are not expected to pose any additional implementation, monitoring or enforcement costs to the District or any other state or local governments. Transactional costs to other state and local governments are addressed in Section 4.0

In terms of costs to the District, the lessened size of the protective zones around Bald Eagle nests reduces the likelihood that the District will have to engage an applicant in activities to mitigate adverse impacts. Second, the provision concerning mitigation activities to be proposed to the District has not changed. Third, the provision of the option to obtain an FWC permit reduces the likelihood that the District will have to engage the applicant in discussions concerning compliance with District mitigation requirements or compliance with the FWC management plan.

The proposed revisions do not require any other state or local agency to implement or enforce the proposed rules and therefore will not impose any additional non-transactional costs. The FWC management plan and permitting programs are not a result of any proposed action of the District.

### **4.0 Transactional Costs**

Transactional costs are defined in Section 120.541, F.S, as “direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.”

The types of mitigation provided to the District described in section 4.3.1.5 of the Basis of Review are described below. They are unchanged except that the Bald Eagle is explicitly addressed as it is no longer a “listed” species but is still protected under the Bald and Golden Eagle Protection Act.

*3.3.1.5. To offset adverse secondary impacts from regulated activities to habitat functions that uplands provide to Bald Eagles (Haliaeetus leucocephalus) for nesting and to listed species evaluated as provided in paragraph 4.2.7(b), mitigation can include the implementation of management plans, participation in a wildlife mitigation park established by the Florida Fish and Wildlife Conservation Commission, or other measures. Measures to offset adverse secondary impacts on wetlands and other surface waters resulting from use of a system can include the incorporation of culverts or bridge crossings designed to facilitate wildlife movement, fencing to limit access, reduced speed zones, or other measures designed to offset the secondary impact.*

The transactional costs associated with the District mitigation activities to protect Bald Eagles and their habitat from adverse impacts could include costs associated with:

- the loss of revenue associated with the reduction of developable or seasonally useable area due to required buffer zones, setbacks or conservation easements (and the costs of establishing such easements),
- the loss of revenue due to changes in the type or optimal arrangement of development and associated activities,
- the loss of revenue and/or increases in financing or development costs due to delays caused by restrictions on certain development or ongoing activities during nesting season,
- monitoring and reporting, or
- monetary or in-kind contributions to wildlife mitigation parks.

As stated previously, these provisions are not changed. To some extent, the above costs may be offset by the additional value conveyed to land adjacent to preserved natural areas.

The transactional costs (and benefits to adjacent land) of complying with the guidelines in the FWC Bald Eagle Management Plan are similar to those listed above. Recommended conservation actions that mitigate activities that may disturb nesting bald eagles are described in detail in Chapter 4 of the plan and are divided into nine categories. Categories A and B generally address construction (building height and project footprint), agriculture, aquaculture, alteration of aquatic habitat, water impoundment, docks and marinas, mining and oil or natural gas drilling or refining. Activities are generally more restricted within 330 feet of a nest and less restricted between 330 and 660 feet of a nest. Setback minimum distances may be lessened if there is a visual buffer between the nest and the activity and the presence of a similar activity of a similar scope closer than 1,500 feet from the nest. The remaining categories address the following activities:

- Category C: Land Management Practices, Including Forestry
- Category D: Agriculture and Linear Utilities (Existing Operations)
- Category E: Off-road Vehicles
- Category F: Motorized Watercraft
- Category G: Non-motorized Recreation such as Hiking, Camping, Birding, Fishing, Hunting or Canoeing
- Category H: Aircraft (Including Helicopters)
- Category I: Blasting or Other Loud, Intermittent Noises

As stated in Section 1.0, the maximum area in which these activities are to be addressed is significantly reduced compared to the previously referenced Federal Fish and Wildlife management plan and the mitigating effects of visual buffers and pre-existing similar activities of

similar scope within 1,500 feet of the nest are recognized. Therefore, the transactional costs of adopting the FWC Bald Eagle Management Plan are likely to be significantly less than the previous option Federal management plan option.

## **5.0 Impacts on Small Business, Small Cities and Counties**

In accordance with Section 120.54(3)(b)2.a, F.S., the District is required to consider the impacts of its rules on small businesses, small cities and small counties. Small businesses are defined in Section 288.703(1), F.S. as independently owned and operated business employing more than 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 in this state which has a Small Business Administration (SBA) 8(a) certification. Small cities are defined in Section 120.52(18), F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A small county is defined in Section 120.52(19), F.S., as any county having an unincarcerated population of 75,000 or less according to the most recent decennial census.

The proposed rule revisions are not expected to increase the cost associated with applying for, obtaining or maintaining an Environmental Resource Permit. One existing compliance option has not changed (proposing mitigation to the District). The other existing compliance option (following the provisions of a Bald Eagle management plan) is likely less costly than before. An additional third option (obtaining a permit from the Florida Fish and Wildlife Commission) may be exercised when it is more advantageous to the permit applicant. Based on these options, there should be no significant cost increase impacts to businesses, cities or counties, small or otherwise.