

MEMORANDUM

TO: Governing Board Members

FROM: Deena Reppen, Deputy Executive Director, Regulatory and Public Affairs

DATE: March 16, 2010

SUBJECT: **Adopt amendments to Rules 40E-1.659, F.A.C., and 40E-4.091, F.A.C., to incorporate a conservation easement for local government.**

Recommendation

Staff recommends adoption of the amendments to Rules 40E-1.659 and 40E-4.091, F.A.C, to incorporate a conservation easement for local governments.

Background

During the review of Environmental Resource Permits, local government agencies sometimes propose to impact wetlands through filling, dredging or other methods and often propose to preserve, enhance or restore other wetlands or uplands as mitigation for those impacts. In addition, local governments sometimes enter into agreements with third parties to conduct site specific mitigation on the local government agency's property. Pursuant to Section 704.06, Fla. Stat., to provide reasonable assurance that certain areas will not be subject to future impacts and that the proposed mitigation areas will be legally protected, a conservation easement is usually placed over the mitigation or preservation area.

In January 2007, the District adopted rules to incorporate several types of standardized easement forms for use by private property owners. The use of the standardized forms reduces expenses for applicants and reduces review time by the District because if a standard form is utilized, individual legal review of the form is not necessary.

However, the currently approved forms cannot be used by local governments due to certain language in those forms that does not apply to government entities. Chapter 40E-1.659, F.A.C., includes all the forms and instructions incorporated by reference into the District's rules. District staff recommends that the rule be amended to incorporate a conservation easement form for local governments.

Applicants may still propose language to address site specific characteristics. The existing rule language explicitly states that when an applicant demonstrates that project specific conditions necessitate deviation from language of the accepted forms, alternative language shall be accepted provided that the intent of Section 704.06, F.S. and Section 4.3.8 of the Basis of review are met.

Staff Contact: **Anita Bain, Director, Environmental Resource Permitting Division**
(561) 682-6866

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

THE FULLTEXT OF THE PROPOSED RULE IS:

40E-1.659 Forms and Instructions.

The following forms and instructions are hereby incorporated by reference in this chapter and may be obtained without cost by contacting the Records Management Specialist, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-8045, ext. 6436, or (561)682-6436 or at any of the District's Service Centers. Locations and contacts for the District's Service Centers may be obtained from the Records Management Specialist at the address and phone number provided herein or on the District's website at <http://www.sfwmd.gov>. These forms may also be obtained from the District's website at <http://www.sfwmd.gov>, "What We Do", then "Permitting/Regulation". On the "Permitting/Regulation" page, click on "Environmental Resource Permits" then "Forms":

(1) The following forms and instructions are hereby incorporated by reference into this chapter:

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
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
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	9-03	Environmental Resource/Surface Water Management Permit Construction Completion

Certification

0881B	9-03	Environmental Resource/Surface Water Management Permit Construction Completion Certification-For Projects Permitted Prior to October 3, 1995
0889	9-04	Certification of Waiver of Permit Application Processing Fee
0920	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
0941	8-95	Environmental Resource Standard/Noticed General Permit No.
0942	8-95	Surface Water Management General Permit No.
0960	9-04	Environmental Resource/Surface Water Management Permit Construction Commencement Notice
0961	9-04	Environmental Resource/Surface Water Management Permit Annual Status Report for Surface Water Management System Construction
0970	8-07	Applicant Transmittal Form for Requested Additional Information
0971	8-07	Joint Application for Environmental Resource Permit/Authorization to Use State Owned Submerged Lands/Federal Dredge and Fill Permit
0972	8-95	Petition for a Formal Wetland and Surface Water Determination
0973	8-95	Above Ground Impoundment Inspection/Certification Report
0974	8-95	Notice of Intent to Construct a Minor Silvicultural System
0980	8-95	Notice of Intent to Use a Noticed General Environmental Resource Permit
1019	9-04	Mitigation Bank Performance Bond to Demonstrate Construction/Implementation Financial Assurance
1020	9-04	Mitigation Bank Irrevocable Letter of Credit to Demonstrate Construction/Implementation Financial Assurance
1021	9-04	Mitigation Bank Standby Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance
1022	9-04	Mitigation Bank Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance
1023	9-04	Mitigation Bank Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance
1024	9-04	Mitigation Bank Standby Trust Fund Agreement to Demonstrate Perpetual Management Financial

		Assurance
1105	6-02	Performance Bond to Demonstrate Financial Assurance
1106	6-02	Irrevocable Letter of Credit to Demonstrate Financial Assurance
1109	8-03	Water Use General Permit
1189	2-06	Notice of Environmental Resource or Surface Water Management Permit
1190	1-07	Deed of Conservation Easement (Standard)
1191	1-07	Deed of Conservation Easement (Standard Passive Recreational)
1192	1-07	Deed of Conservation Easement (Standard Riparian)
1194	1-07	Deed of Conservation Easement (Third Party Standard)
1195	1-07	Deed of Conservation Easement (Third Party Passive Recreational)
1196	1-07	Deed of Conservation Easement (Third Party Riparian)
1197	1-07	Restrictive Covenant (Standard)
<u>1318</u>	<u> </u>	<u>Deed of Conservation Easement (Local Governments)</u> <u>(incorporated by reference in Section 4.3.8. of the Basis of Review for Environmental Resource</u> <u>Permit Applications within the South Florida Water Management District, incorporated by</u> <u>reference in Rule 40E-4.091, F.A.C.</u>

Rulemaking Specific 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 _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Anita R. Bain, Director, Environmental Resource Permitting Division

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

THE FULLTEXT OF THE PROPOSED RULE IS:

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 – _____ ~~11-11-09~~”.

(b) through (k) No Change.

(2) No Change.

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, _____.

(The following represents proposed changes to the document entitled “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District - 11-11-09” incorporated by reference in Rule 40E-4.091, F.A.C.)

4.3.8 Real Property Conveyances

(a) and (b) No Change

(c) The use of Form No(s) 1190-1192, ~~and~~ 1194-1197, and 1318, incorporated by reference ~~referenced~~ in Rule 40E-1.659, F.A.C., shall constitute consistency with Section 704.06, F.S.

Where the applicant demonstrates that project specific conditions necessitate deviation from language of the accepted forms, alternative language shall be accepted provided that the intent of Section 704.06, F.S., and Section 4.3.8 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District are met.

(d) No Change.

NAME OF PERSON ORIGINATING PROPOSED RULE: Anita R. Bain, Director, Environmental Resource Permitting Division

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