

**OPERATING AGREEMENT CONCERNING
REGULATION UNDER PART IV, CHAPTER 373, F.S.,
BETWEEN
NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

I. INTENT

The Northwest Florida Water Management District (DISTRICT) and the State of Florida Department of Environmental Protection (DEPARTMENT) enter into this operating Agreement to implement an environmental resource permit program within the geographical jurisdiction of the DISTRICT in accordance with Section 373.046, F.S., and Part IV of Chapter 373, F.S. 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 under Subsections 373.421(2) through (5), F.S. It is a goal of this Operating Agreement that the division of responsibilities provides no reduction in levels of compliance monitoring and enforcement and, where possible, allows increased levels of compliance monitoring and enforcement.

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. The DEPARTMENT and DISTRICT also encourage local governments to pursue delegation to implement the environmental resource permit program within their jurisdiction in accordance with Sections 373.4145(4) and 373.441, F.S. The DEPARTMENT and DISTRICT commit to review and amend this Agreement, if needed, within two years of adoption of the rules authorized under Section 373.4145(1)(b), F.S., to further refine the division of responsibilities in consideration of experience gained and agency resources.

II. RESPONSIBILITIES OF DISTRICT AND DEPARTMENT

A. DEPARTMENT Responsibilities

1. Permits, Variances, and Verification of Exemptions and Noticed General Permits

The DEPARTMENT shall be responsible for the review and final action on all applications and notices for permits, petitions for variances, and verification of exemptions (including those under s. 403.813(1), F.S.), under Part IV of Chapter 373, F.S., for the project types listed in this section. In addition, the DEPARTMENT shall be responsible for review and final action on all other applications and notices for permits, verification of exemptions, and petitions for variances under Section 373.4145, F.S., for project types that are not specifically the responsibility of the DISTRICT as provided in Section II.B., below.

- a. All activities, in whole or in part, in, on, or over submerged lands owned by the State of Florida, including state-owned submerged lands.
- b. All activities that involve dredging, filling, or construction in, on, or over 5 or more acres of wetlands or other surface waters.

- c. All wet or dry docking facilities, piers, and shore protection structures, including all adjacent associated residential, commercial, and governmental development and any needed dredging and filling associated with such facilities, structures, and development, regardless of the acreage of any associated dredging or filling, except as provided in Section II.B. of this Agreement.
- d. All “in water” type activities which, for purposes of this Agreement, shall consist of works and activities that generally do not require an associated stormwater management system, such as:
 - (1) Navigational and other canal, channel, and ditch dredging, except dredging of ditches that are a component of an activity that is otherwise the responsibility of the DISTRICT under Section II.B. of this Agreement;
 - (2) Organic detrital material dredging, removal, and relocation, aquatic plant management activities regulated under Chapter 369, F.S., and lake, pond, and other waterbody restoration and enhancement that is not otherwise mitigation for an activity that is the responsibility of the DISTRICT under Section II.B. of this Agreement; and
 - (3) Boat ramps, ski jumps, ski slalom courses, aids to navigation, mooring buoys and fields, piling supported structures that are not physically connected to uplands, fish attractors, artificial reefs, treasure salvage, deadhead logging, and archaeological research or exploration.
- e. 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).
- f. Systems proposed in whole or in part seaward of the coastal construction control line. In areas where a CCCL has not been established, systems 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 coast shoreline, exclusive of bays, inlets, rivers, bayous, creeks, passes, and the like.
- g. 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 the use of a scalping screen to remove large rocks, wood, and debris, and that do not involve any excavation, construction, or other dredging or filling in, on, or over five or more acres of wetlands or other surface waters, including any development associated with the mine.
- h. 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.
- i. Projects constructed, operated, or maintained, and other activities by the DISTRICT.
- j. 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, 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, and is not located within wetlands or other surface waters.

- k. 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, and is not located within wetlands or other surface waters.

- l. 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 the following activities that are a part of a larger project for which the DISTRICT is otherwise responsible under the provisions of Section II.B of this Agreement:
 - (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 Chapter 62-346, 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 DISTRICT reviews and takes final action on permit applications under Section II.B. 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 System), 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); and
 - (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 DISTRICT reviews and takes final action on permit applications under Section II.B. of this Agreement.

- m. 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 DISTRICT reviews and takes final action on permit applications under Section II.B. of this Agreement.
- n. 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 DISTRICT reviews and takes final action on permit applications under Section II.B. of this Agreement.
- o. 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 DISTRICT reviews and takes final action on permit applications under Section II.B. of this Agreement.
- p. 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 DISTRICT reviews and takes final action on permit applications under Section II.B. of this Agreement.
- q. Temporary systems proposed for commercial film productions.
- r. Aquaculture activities not exempt pursuant to Subsection 373.406(8), F.S.
- s. Projects constructed, operated or maintained by the U.S. Army Corps of Engineers.
- t. Ecosystem Management Agreements and activities conducted in accordance with Ecosystem Management Agreements under Section 403.0752, F.S.

Pursuant to Section 373.4145(6), F.S., the permit applications encompassed within the DEPARTMENT's responsibilities hereunder include those submitted for Chapter 62-312, F.A.C., wetland resource (dredge and fill) permits and Chapter 62-25, F.A.C., stormwater permits.

2. Formal Determinations

The DEPARTMENT shall review and take final action on all petitions for formal determinations of the extent of wetlands and other surface waters pursuant to Section 373.421, F.S.

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 Areas Agreements (ROMAs)

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.

B. DISTRICT Responsibilities

1. The DISTRICT shall be responsible for the review and final action on all applications and notices for permits under Section 373.4145(1), F.S., petitions for variances or waivers, and verification of exemptions (including those under s. 403.813(1), F.S.), under Part IV of Chapter 373, F.S., for the project types listed in this section.
 - a. Residential, commercial, and governmental development, including roadways, and associated surface water management systems, and related construction that:
 - (1) Is not located, in whole or in part, in, on or over submerged lands owned by the state of Florida;
 - (2) Involves a total of less than five acres of dredging or filling in, on, or over wetlands or other surface waters, except when such development includes docks, piers, shore protection structures, or "in water" activities that are the responsibility of the DEPARTMENT under Section II.A. of this Agreement. However, this shall not divest the DISTRICT from having the responsibility to review and take agency action on activities that incorporate retaining walls or other bulkhead structures as an integral component of surface water management systems that are not located in, on, or over state-owned submerged lands;
 - (3) Consists of a system on four or more contiguous parcels of land intended to serve more than one dwelling unit, or of three or fewer contiguous parcels of land under single ownership that have or are proposed to have a system serving more than one dwelling unit;
 - (4) Is not located seaward of the coastal construction control line or other areas as described in Section II.A.1.c of this Agreement;
 - (5) Is not associated with a seaport as described in Section II.A.1.e. of this Agreement, or with activities of the U.S. Army Corps of Engineers;
 - (6) Is not associated with temporary systems for commercial film production as described in Section II.A.1.o. of this Agreement; and
 - (7) Does not consist of or include an aquaculture activity.
 - b. Mining activities that are not the responsibility of the DEPARTMENT under Section II.A.1.d. of this Agreement.
 - c. Solid waste management, hazardous waste, domestic or industrial waste, and potable water facilities, electrical distribution lines, communication cables and

lines, and natural gas distribution lines that are not the responsibility of the DEPARTMENT under Sections II.A.1.g. through m. of this Agreement.

- d. Projects constructed, operated or maintained, and other activities by the DEPARTMENT.
 - e. Agriculture and silviculture activities regulated under Chapter 40A-44, F.A.C. (July 1, 1998).
2. The DISTRICT shall review and take final action on the following:
- a. All Works of the DISTRICT permits under Chapter 40A-6, F.A.C. (March 2, 2000).
 - b. Management and Storage of Surface Waters projects regulated under Chapters 40A-4 (March 2, 2000), and 40A-44 (July 1, 1998), F.A.C. However, the DISTRICT shall provide technical assistance to the DEPARTMENT during the review of activities that are retained by the DEPARTMENT under Section II.A. of this Agreement that also require a separate permit under Chapter 40A-4, F.A.C. (March 2, 2000).

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 five working 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 Part IV of the 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 Sections 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.

III. COMPLIANCE MONITORING AND ENFORCEMENT

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, 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 Operating 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., that which are undertaken without the required permits, and take appropriate enforcement action, when it has permitting responsibilities for those activities under this Operating Agreement.

IV. SPECIAL CASES

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

1. An extensive regulatory history or 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 within 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;
4. Circumstances in which a deviation would result in the application or petition being more efficiently or effectively processed; or
5. Compliance and enforcement of activities in which there may be violations of rules of the DEPARTMENT or DISTRICT that are not the subject of this Agreement;

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 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

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 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:

1. Joint training efforts to maximize the use of training resources and ensure that adequate training is provided.
2. Promotion of consistent interpretation and implementation of ERP rules.
3. Proposed amendments to ERP rules.
4. Development of consistent ERP compliance and enforcement.
5. Future revisions to the DEPARTMENT and DISTRICT operating agreements regarding the ERP program.
6. Development of a statewide ERP data set and a computer data exchange methodology.
7. Such other activities that the Committee deems necessary or desirable to achieve and maintain the goals of this operating agreement.

VII. EFFECTIVE DATE

1. This Operating Agreement shall take effect upon execution by both parties and adoption by rule of this Operating Agreement.
2. 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 initiated the enforcement case, except when the DISTRICT and the DEPARTMENT agree, 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 Operating Agreement will be processed as described in Section II of this Operating Agreement.

NORTHWEST FLORIDA WATER
MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD



Douglas E. Barr
EXECUTIVE DIRECTOR
75 Water Management Drive
Havana, Florida 32333-4712

Date: 10/21/10

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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SECRETARY
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Date: 10/22/10