

RULE CHAPTER TITLE:
Environmental Resource Permits

RULE CHAPTER NO.:
40B-400, F.A.C

PART I: GENERAL PROVISIONS

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PART I
GENERAL PROVISIONS

40B-400.021 Definitions. The definitions set forth in s.40B-4.1020, F.A.C., shall apply to this chapter. Additionally, as used in this chapter:

- (1) "Aquatic preserves" means those areas designated in Part II, chapter 258, F.S.
- (2) "Coral" means living stony coral and soft coral.
- (3) "Creation" means the establishment of new wetlands or surface waters by conversion of other land forms.
- (4) "Drainage basin" means a subdivision of a watershed.
- (5) "Endangered species" means those animal species which are listed in s.39-27.003, F.A.C., and those plant species which are listed in 50 Code of Federal Regulations 17.12.
- (6) "Enhancement" means improving the ecological value of wetlands, other surface waters, or uplands that have been degraded in comparison to their historic condition.
- (7) "Forested wetlands" means those wetlands where the canopy coverage by trees with a diameter at breast height of greater than four inches is greater than ten percent, as well as those areas required to be planted with tree species to establish or reestablish forested wetlands pursuant to a permit issued or enforcement action taken, under rules adopted under Part IV of chapter 373, F.S., or s.403.91-403.929, F.S. (1984 Supp.) as amended, and those areas where the canopy has been temporarily removed but are expected to revegetate to a forested wetland if use of the area would remain unchanged.
- (8) "Herbaceous wetlands" means those wetlands dominated by nonwoody vegetation that have less than a ten percent canopy coverage of trees with a diameter at breast height of greater than four inches.
- (9) "Isolated wetland" means any wetland without a direct hydrologic connection to a lake, stream, estuary, or marine water.
- (10) "Listed species" means those animal species which are endangered, threatened or of special concern and are listed in s.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, when such plants are found to be located in a wetland or other surface water.

(11) "Materials" means matter of any kind, such as, sand, clay, silt, rock, dredged material, construction debris, solid waste, pilings or other structures, ash, and residue from industrial and domestic processes. The term shall not include the temporary use and placement of lobster pots, crab traps, or similar devices or the placement oyster clutch pursuant to s.370.16, F.S., or chapter 16B-5, F.A.C.

(12) "Mitigation" means an action or series of actions to offset the adverse impacts that would otherwise cause a regulated activity to fail to meet the criteria set forth in ss.40B-400.103(1)(d) and (f) and s.40B-400.104, F.A.C. Mitigation usually consists of restoration enhancement, creation, preservation, or a combination thereof.

(13) "Preservation" means the protection of wetlands, other surface waters or uplands from adverse impacts by placing a conservation easement or other comparable land use restriction over the property or by donation of fee simple interest in the property to an appropriate entity.

(14) "Regulated activity" means the construction, alteration, operation, maintenance, abandonment or removal of a system regulated pursuant to Part IV, chapter 373, F.S.

(15) "Restoration" means converting back to historic condition those wetlands, surface waters, or uplands which currently exist as a land form which differs from the historic condition.

(16) "Riprap" is a sloping retaining or stabilizing structure made to reduce the force of waves and to protect the shore from erosion, and consists of unconsolidated boulders, rocks, or clean concrete rubble with no exposed reinforcing rods or similar protrusions.

(17) "Species of special concern" means those species listed in s.39-27.005, F.A.C.

(18) "Submerged grassbeds" means any native, herbaceous, submerged vascular plant community that is growing on the bottoms of surface waters waterward of the mean high water line or ordinary high water line.

(19) "Surface water management system or System" means a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, or any combination thereof. The terms "surface water management system" or "system" include areas of dredging or filling, as those terms are defined in ss.373.403(13) and 373.403(14), F.S.

(20) "Threatened species" means those animal species listed in s.39-27.004, F.A.C.

(21) "Vertical seawall" is a seawall the waterward face of which is at a slope greater than 75 degrees to the horizontal. A seawall with sloping riprap covering the waterward face to the mean high water line shall not be considered a vertical seawall.

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Specific Authority 373.044, 373.113, 373.118 FS.

Law Implemented 373.118, 373.413, 373.416, 373.426 FS.

History--New 10-3-95.

40B-400.051 Exemptions.

(1) Exemptions are as found in s.373.406, F.S.

(2) No permit shall be required under chapters 40B-4, or 40B-400, F.A.C, for the following activities:

(a) The repair or replacement of existing functional pipes or culverts the purpose of which is the discharge or conveyance of stormwater. In all cases, the invert elevation, the diameter, and the length of the culvert shall not be changed. However, the material used for the culvert may be different from the original material. This exemption does not authorize the repair, replacement, or

alteration of dam's spillways or appurtenant works, nor construction activities or procedures that cause violation of water quality standards as set forth in chapter 62-302 and s.62-4.242, F.A.C.

(b) The performance of maintenance dredging of existing manmade canals, channels, basins, berths, and intake and discharge structures, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material and return water from the spoil site into wetlands or other surface waters, provided no more dredging is performed than is necessary to restore the canal, channels, basins, berths, and intake and discharge structures to original design specifications, and provided that control devices are used at the dredge site to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed before April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent wetlands or other surface waters. Where no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund, the Department, the District or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal, channel, basin, berth or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than five feet below mean low water.

(c) The maintenance of functioning insect control structures, and the maintenance of functioning dikes and functioning irrigation and drainage ditches, including roadway drainage ditches, provided:

1. The spoil material is deposited on a self-contained upland spoil site which will prevent the escape of the spoil material and return water into wetlands or other surface waters.

2. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive as determined by the Department of Agriculture and Consumer Services, pursuant to ss.403.088(1), F.S., that it will inhibit the proposed insect control, existing spoil sites or dikes may be used, upon notification to the District. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as approved, conditionally approved, restricted or conditionally restricted waters for shellfish harvesting by the Department, or functions as a habitat for commercially or recreationally important shellfish or finfish.

3. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.

4. This exemption shall apply to manmade trenches dug for the purpose of draining water from the land or for transporting water for use on the land and which are not built for navigational purposes.

(d) Maintenance of minor silvicultural surface water management systems as described in ss.40B-400.500(4), F.A.C., which were permitted under Part IV of chapter 373, F.S. or were constructed prior to the requirements for a permit under this part, provided such maintenance is conducted in accordance with the performance standards set forth in s.40B-400.500(5), F.A.C.

(e) The restoration of less than 100 feet in length of existing insect control impoundment dikes and the connection of such impoundments to tidally influenced waters. Such impoundments shall be connected to tidally influenced waters for at least six months each year, beginning September 1, and ending February 28, if feasible, or operated in accordance with an impoundment management plan approved by the District. The connection shall be of sufficient cross-sectional area to allow

beneficial tidal influence. Restoration shall involve no more dredging than needed to restore the dike to original design specifications, and the final elevation of the dredge area shall be within two feet of immediately adjacent bottom elevations. For the purposes of this paragraph, restoration shall not include maintenance of impoundment dikes of insect control impoundments.

(f) The installation, replacement or repair of mooring pilings and dolphins associated with private docking facilities.

(g) The installation of private docks of 1000 square feet or less of surface area over wetlands or other surface waters or 500 square feet or less of surface area over wetlands or other surface waters for docks which are located in Outstanding Florida Waters. This exemption shall include the construction of structures above the dock area, such as gazebos and boat shelters, provided such structures are not enclosed with walls and doors, are not used for living, commercial purposes, or storage of materials other than those associated with recreational use, and provided the structures do not exceed, together with the docking facility, the total area limitations above. To qualify for this exemption, any such dock and associated structure:

1. Shall be used for recreational, noncommercial activities;
2. Shall be constructed or held in place by pilings, including floating docks, so as not to involve filling or dredging other than necessary to install the pilings;
3. Shall not substantially impede the flow of water, or create a navigational hazard, or cause water quality violations; and
4. Shall be the sole dock constructed pursuant to this exemption as measured along the shoreline for a minimum distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot. For the purposes of this paragraph, multi-family living complexes and other types of complexes or facilities associated with the proposed private dock shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property. Construction of a private dock under this exemption does not require the District to issue a subsequent permit to construct a channel to provide navigational access to the dock. Activities associated with a private dock shall include the construction of structures attached to the pier which are only suitable for the mooring or storage of boats (i.e., boatlifts).

Nothing in this paragraph shall prohibit the Department from taking appropriate enforcement action pursuant to chapter 403, F.S., to abate or prohibit any activity otherwise exempt from permitting pursuant to this paragraph if the Department can demonstrate that the exempted activity has caused water pollution in violation of chapter 403, F.S.

(h) Construction of private docks in artificially created waterways where construction will not violate water quality standards, impede navigation, or adversely affect flood control.

- (i) The replacement or repair of existing docks and mooring piles, provided:
1. No fill material other than the piles is used;
 2. The replacement or the repaired dock or mooring pile is in the same location and of the same configuration and dimensions as the dock or mooring pile being replaced or repaired; and
 3. The dock or mooring pile must be functional and able to provide access to boats moored at the dock or pile before this exemption may be used unless such dock or mooring pile has been rendered nonfunctional by a discrete event, such as a storm, flood, accident or fire.

(j) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists, or the installation and maintenance to design specifications of boat ramps open to the public in any wetlands or other surface

waters where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the wetlands or other surface waters, and the installation of docks with an area of 500 square feet or less over wetlands or other surface waters that are associated with and adjoining the boat ramps constructed pursuant to this exemption. All material removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material and return water from the spoil site into the wetlands or other surface waters. For the purpose of this exemption, artificial bodies of water shall include residential canal systems, canals permitted by a District created under s.373.069, F.S., and artificially created portions of the Florida Intracoastal Waterway.

(k) Construction of seawalls or riprap, including only that backfilling needed to level the land behind seawalls or riprap, in artificially created waterways, where such construction will not violate existing water quality standards, impede navigation or adversely affect flood control. An artificially created waterway is defined as a body of water that has been totally dredged or excavated and which does not overlap natural wetlands or other surface waters. For the purpose of this exemption, artificially created waterways shall also include existing residential canal systems. This exemption does not apply to the construction of vertical seawalls in estuaries or lagoons unless the proposed construction is within an existing man-made canal where the shoreline is currently occupied in whole or in part by vertical seawalls.

(l) The restoration of a seawall or riprap at its previous location or upland of or within one foot waterward of its previous location. No filling can be performed except in the actual restoration of the seawall or riprap. No construction shall be undertaken without necessary title or leasehold interest, especially where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction and natural erosion. Restoration and repair shall be performed using the criteria set forth in s.373.414(5), F.S. This exemption shall be limited to functioning seawalls or riprap. This exemption shall not affect the permitting requirements of chapter 161, F.S.

(m) The construction of private vertical seawalls in wetlands or other surface waters, other than in an estuary or lagoon, and the construction of riprap revetments, where such construction is between and adjoins at both ends existing seawalls or riprap, follows a continuous and uniform construction line with the existing seawalls or riprap, is no more than 150 feet in length, does not violate state water quality standards, impede navigation, or adversely affect flood control. However, this exemption shall not affect the permitting requirements of chapter 161, F.S. Construction shall be in accordance with s.373.414(5), F.S.

(n) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of wetlands or other surface waters, except in Class I and Class II waters and aquatic preserves, provided that no dredging or filling is necessary.

(o) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of wetlands or other surface waters.

(p) Activities necessary to preserve, restore, repair, remove, or replace an existing communication or power pole or line, provided that the work does not involve dredge and fill activities other than the removal of the existing structure and the installation of the new structure, and, in the case of a power pole or line, the activity does not increase the voltage of existing power lines. An activity does not qualify to use this exemption if it results in relocation of an existing structure or facility more than ten feet in any direction from its original location, or if it involves the construction of new power or telephone lines or the repair and replacement of existing structures that require dredge and fill activities in order to provide access to the site.

(q) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width, provided:

1. No more dredging or filling in wetlands or other surface waters is performed than that necessary to replace or repair pilings;
2. The structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge; and
3. No debris from the original bridge shall be allowed to remain in wetlands or other surface waters.

(r) The installation of aids to navigation, including bridge fender piles, "No Wake" and similar regulatory signs, and buoys associated with such aids, provided that the devices are marked in accordance with s.327.40, F.S.

(s) The use of rotenone, by the Florida Game and Fresh Water Fish Commission, in conducting tests related to its responsibility regarding fish management. The chemical selected shall be used at no more than the strength approved by the EPA label. In addition, the chemical shall be used only under the direct onsite supervision of a staff member of the Florida Game and Fresh Water Fish Commission.

(t) Construction of freshwater fish attractors by Florida Game and Fresh Water Fish Commission, U.S. Forest Service, and county and municipal governments, provided that the material to be used shall be clean concrete, rock, brush, logs, or trees, and shall be free of soils, preservatives, oil, greases, debris, litter, putrescible substances, "white goods," asphalt material, tires, or other pollutants, and shall be firmly anchored to the bottom of the waterbody. The size of an individual fish attractor shall not exceed one quarter of an acre in area. The material shall be placed so that the top of the fish attractor is at least three feet below the surface of the water at mean annual low water and shall be outside any posted navigational channels. No fish attractor material shall be placed on or in areas vegetated by native aquatic vegetation. The site shall be marked with a buoy or buoys to ensure that no material is deposited outside of the site.

(u) Installation of piling support structures associated with water testing or monitoring equipment by the Department or the District, provided that flow or navigation are not impeded.

(v) The construction or maintenance of culverted driveway or roadway crossings and bridges of artificial waterways, provided:

1. This exemption shall apply only to wholly artificial, non-navigable drainage conveyances;
2. The construction project area shall not exceed one acre, and the construction shall be for a discrete project that is not part of a larger plan of development which requires permitting under chapters 40B-4 or 40B-400, F.A.C.;
3. The artificial waterway in existing condition shall be not more than four feet deep, measured from the top of bank to the bottom of the artificial waterway;
4. The person performing the exempt activity shall ensure that the size and capacity of the culvert(s) will be adequate to pass normal high water stages of the artificial waterway without causing adverse impacts to upstream or downstream property, but the culvert shall not be larger than one 24-inch diameter pipe, or its equivalent, and in no instance shall the culvert provide a smaller cross-sectional area or discharge capacity than any upstream culvert;
5. The elevation of the culvert invert shall be at the existing bottom grade of the artificial waterway;
6. The length of the driveway or roadway crossing the waterway shall not exceed 30 feet from top of bank to top of bank;

7. The top width of the driveway or roadway shall not exceed 20 feet, the toe to toe width shall not exceed 40 feet, and side slopes shall be no steeper than three feet horizontal to one foot vertical;

8. Clean fill used for the crossing shall be obtained from an upland borrow pit or from a dredge site that is in compliance with the regulatory requirements of Part IV of chapter 373, F.S., either through a permit or an exemption;

9. There shall be no additional dredging, filling, or construction activities within the artificial waterway or project area, except those directly involved in the construction or operation and maintenance of the culverted crossing and those exempted from regulation under Part IV of chapter 373, F.S.;

10. All temporary fill in construction areas shall be removed and regraded to original elevations and revegetated;

11. The person performing the exempt activity shall implement measures for erosion and pollution control using best management practices, including turbidity curtains or similar devices and other site specific practices, in strict adherence to the Florida Department of Transportation's "Standard Specifications for Road and Bridge Construction," and chapter 6 of the Department's "Florida Development Manual," to prevent violations of state water quality standards. Temporary erosion controls shall be implemented prior to and during construction, and permanent erosion control measures for all exposed soils shall be completed within seven calendar days of the most recent construction activity;

12. Any spoil material from construction or maintenance shall be used or disposed of on an upland portion of the property or shall be transported off site and deposited on a self-contained upland spoil site that is in compliance with the permitting requirements of this chapter and chapter 40B-4, F.A.C., as applicable;

13. If dewatering is performed, all temporary fill dikes and dewatering discharges shall be installed and constructed so that no upstream flooding or impoundment occurs and to prevent siltation, erosion or turbid discharges into waters of the State in violation of state water quality standards. Any temporary works shall be completely removed, and all areas upstream and downstream from the crossing shall be restored to grades, elevations and conditions which existed before the construction;

14. This exemption shall apply only to a maximum of two crossings on any total land area of property with a minimum distance of 500 feet between crossings; and

15. This exemption shall not apply to activities involving relocation or other alteration of all or part of the artificial waterway, or construction for other than the proposed culvert crossing, except as exempted by chapter 373, F.S., or s.40B-4.1070, F.A.C.

(w) The installation, removal, and replacement of utility poles that support telephone or communication cable lines, or electric distribution lines of 35 KV or less, together with the bases and anchoring devices to support those poles, as specified below. For the purpose of this exemption, "anchoring device" shall mean steel guy wires fastened to the ground, and "base" shall mean a concrete or steel foundation not exceeding four feet in radius, used to support a utility pole. This exemption shall be subject to the following conditions:

1. No more than 15 utility poles may be installed, removed, or replaced in wetlands;
2. This exemption shall not apply in surface waters other than wetlands;
3. The temporary disturbance to wetlands shall be limited to a length of 0.5 miles, an areal extent of 0.5 acre, and a width of 30 feet to access the site to actually install, remove, or replace the utility poles. Thereafter, maintenance of the utility right-of-way in wetlands shall be limited to

a cleared corridor that does not exceed a total width of 15 feet and a total area of 0.25 acre;

4. This exemption shall not apply in forested wetlands located within 550 feet from the mean or ordinary high water line of a named waterbody that is designated as an Outstanding Florida Water or an Outstanding National Resource Water, or to activities in any aquatic preserves;

5. There shall be no permanent placement of fill other than utility poles and anchoring devices;

6. There shall be no dredging or filling of fill pads or access roads except for temporary mats, which may be used to access pole installation sites, and all temporary mats shall be removed within thirty days after the installation, removal or replacement of the utility poles, associates bases, and anchoring devices;

7. The installation of the utility pole(s) and associated bases and anchoring devices shall not interfere with navigation or impede water flow in wetlands;

8. Turbidity, sedimentation, and erosion shall be controlled during and after construction to prevent violations of state water quality standards due to construction related activities;

9. Except for the permitted structures, pre-construction ground elevations and the contours of all soils that are disturbed by construction activities, including vehicle ruts in wetlands, shall be restored within 30 days of completion of the installation of the utility line or cable, and restored grades shall be stabilized within 72 hours following completion of elevation and contour restoration to minimize erosion;

10. Vehicle usage in wetlands shall be conducted so as to minimize tire rutting and erosion impacts;

11. Water jets shall not be used except for those which are a pre-engineered part of the pole, and provided that the water for the jets is either recirculated on site or is discharged in a self-contained upland disposal site;

12. Vehicular access in wetlands shall be limited to existing roads, trails, rights-of-way or easements, and to other previously disturbed corridors where they exist; and

13. The permittee shall provide an annual report to the District which summarizes the activities conducted under this exemption for the period from January 1, to December 31, of each year, including: the acreage of temporary impacts in wetlands resulting from the use of temporary mats and the clearing of wetland vegetation; the extent of permanent impacts to wetlands including the number of poles and structures in wetlands and the acreage of clearing in wetlands; the voltage of all electric lines that are installed; the number of times this exemption is used; the specific location of each line that is installed (including the county, the section, township, and range, and the identity of permanent landmarks such as roads and named wetlands and other surface waters within or adjacent to the work location); and the number of times and locations where water jets are used.

(3) Exemptions for Treatment or Disposal Systems.

(a) Alteration and maintenance of the following shall be exempt from the provisions in this chapter and chapter 40B-4, F.A.C., implementing ss.373.414(1) through 373.414(6), 373.414(8), and 373.414(10), F.S.; and ss.373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to s.373.414, F.S. (1991):

1. Works, impoundments, reservoirs, and other watercourses constructed and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under s.62-528.700, 62-302.520 or chapters 62-17, 62-600, 62-610, 62-640, 62-650, 62-660, 62-670, 62-671, 62-673, 62-701, F.A.C., or s.403.0885, F.S., or rules implementing s.403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to 62-

611, F.A.C., or section 403.0885, F.S. or its implementing rules;

2. Works, impoundments, reservoirs, and other watercourses constructed solely for wastewater treatment or disposal before a construction permit was required under chapter 403, F.S., and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under s.62-528.700, 62-302.520, or chapters 62-17, 62-600, 62-610, 62-640, 62-650, 62-660, 62-670, 62-671, 62-673, or 62-701, F.A.C.; or s.403.0885, F.S., or rules implementing s.403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to chapter 62-611, F.A.C., or s.403.0885, F.S. or its implementing rules;

3. Works, impoundments, reservoirs, and other watercourses of less than 0.5 acre in combined area on a project-wide basis, constructed and operated solely for stormwater treatment in accordance with a noticed exemption under chapter 62-25, F.A.C., or a valid permit issued under chapters 62-25 (excluding chapter 62-25.042), 62-330, 40B-4, F.A.C., except those permitted as wetland stormwater treatment systems; and

4. Works, impoundments, reservoirs, and other watercourses of less than 0.5 acre in combined area on a project-wide basis, constructed and operated solely for stormwater treatment before a permit being required under chapters 62-25, or 40B-4, F.A.C.

(b) Alteration and maintenance of the following shall be exempt from the provisions in this chapter and chapter 40B-4, F.A.C., adopted to implement ss.373.414(1), 373.414(2)(a), 373.414(8), and 373.414(10), F.S.; and ss.373.414(3) through 373.414(6), F.S.; and ss.373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to 373.414, F.S. (1991), except for authority to protect threatened and endangered species in isolated wetlands:

1. Works, impoundments, reservoirs, and other watercourses of 0.5 acre or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment in accordance with a noticed exemption under chapter 62-25, F.A.C., or a valid permit issued under chapters 62-25 (excluding chapter 62-25.042), 62-330, or 40B-4, F.A.C., except those permitted as wetland stormwater treatment systems.

2. Works, impoundments, reservoirs, and other watercourses of 0.5 acre or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment before a permit was required under chapters 62-25 or 40B-4, F.A.C.

(c) The exemptions in paragraphs (a) and (b) above shall not apply to works, impoundments, reservoirs or other watercourses that are:

1. Currently wetlands which existed before construction of the stormwater treatment system and were incorporated in it;

2. Being altered through expansion into wetlands or other surface waters; or

3. Wetlands created, enhanced or restored as mitigation for wetland or surface water impacts under a permit issued by the Department or the District.

(d) Alterations and maintenance of works, impoundments, reservoirs and other watercourses exempt under this subsection shall not be considered in determining whether the wetland permitting threshold in this chapter and chapter 40B-4, F.A.C., are met or exceeded.

(e) Works, impoundments, reservoirs and other watercourses exempt under this subsection, other than isolated wetlands in systems described in paragraph (b) above, shall not be delineated under s.373.421, F.S.

(f) This exemption shall not affect the application of state water quality standards,

including those applicable to Outstanding Florida Waters, at the point of discharge to waters as defined in ss.403.031(13), F.S.

(g) As used in this subsection, "solely for" means the reason for which a work, impoundment, reservoir, or other watercourse is constructed and operated, and such construction and operation would not have occurred but for the purposes identified in paragraphs (a) and (b) above. Furthermore, the phrase does not refer to a work, impoundment, reservoir, or other watercourse constructed or operated for multiple purposes. Incidental uses, such as occasional recreational uses, will not render the exemption inapplicable, so long as the incidental uses are not part of the original planned purpose of the work, impoundment, reservoir or other watercourse. However, for those works, impoundments, reservoirs, or other watercourses described in subparagraphs (a)3. and (b)1., use of the system for flood attenuation, whether originally planned or unplanned, shall be considered an incidental use so long as the works, impoundments, reservoirs, and other watercourses are no more than two acres larger than the minimum area required to comply with the applicable stormwater treatment requirements of chapters 62-25, 62-330 or 40B-4, F.A.C. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal.

(4) Surface Waters or Wetlands Created by Mosquito Control Activities. Construction, alteration, operation, maintenance, removal, and abandonment of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, or works, in, on or over lands that have become surface waters or wetlands solely because of mosquito control activities undertaken as a part of a governmental mosquito control program, and which lands were neither surface water or wetlands before such activities, shall be exempt from the provisions in this chapter adopted by the District to implement ss.373.414(1) through (6); 373.414(7) regarding any authority granted pursuant to s.373.414, F.S. (1991), 373.414(8) and 373.414(10), F.S.

(5) The performance of activities pursuant to the provisions of the exemptions set forth in this section does not relieve the person or persons who are using the exemption or who are constructing or otherwise implementing the activity from meeting the permitting or performance requirements of other District rules.

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40B-400.103 Conditions for Issuance of Permits.

(1) In order to obtain a standard general, individual, or conceptual approval permit under this chapter or chapter 40B-4, F.A.C., an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal or abandonment of a surface water management system:

(a) Will not cause adverse water quantity impacts to receiving waters and adjacent lands;

(b) Will not cause adverse flooding to on-site or off-site property;

(c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities;

(d) will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;

(e) Will not adversely affect the quality of receiving waters such that the water quality standards set forth in chapters 62-3, 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including

any antidegradation provisions of s.62-4.242 (1)(a) and (b), 62-4.242(2) and (3), and 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in s.62-4.242(2) and (3), F.A.C., will be violated;

- (f) Will not cause adverse secondary impacts to the water resources;
- (g) Will not adversely impact the maintenance of surface or ground water levels or surface water flows;
- (h) Will not cause adverse impacts to a work of the District established pursuant to s.373.086, F.S.;
- (i) Will be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed;
- (j) Will be conducted by an entity with the financial, legal, and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and
- (k) Will comply with any applicable special basin or geographic area criteria established by District rule.

(2) If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the applicant must comply with the requirements set forth in s.12.2.4.5, Environmental Resource Permit Applicant's Handbook.

(3) The standards and criteria, including the mitigation provisions and the provisions for elimination or reduction of impacts, contained in the Environmental Resource Permit Applicant's Handbook adopted by reference in s.40B-400.091, F.A.C., shall determine whether the reasonable assurances required by ss.40B-400.103(1) and s.40B-400.104, F.A.C., have been provided.

PROPOSED EFFECTIVE DATE IS OCTOBER 3, 1995.

Specific Authority 373.044, 373.113, 373.118 FS.

Law Implemented 373.118, 373.413, 373.416, 373.426 FS.

History--New 10-3-95.

40B-400.104 Additional Conditions for Issuance of Permits

In addition to the conditions set forth in s.40B-400.103, F.A.C., in order to obtain a standard general, individual, or conceptual approval permit under this chapter or chapter 40B-4, F.A.C., an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal and abandonment of a system:

(1) Located in, on or over wetlands or other surface waters will not be contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the activity will be clearly in the public interest, as determined by balancing the following criteria as set forth in ss.12.2.3 through 12.2.3.7, Environmental Resource Permit Applicant's Handbook:

- (a) Whether the activity will adversely affect the public health, safety or welfare or the property of others;
- (b) Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
- (c) Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
- (d) Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
- (e) Whether the activity will be of a temporary or permanent nature;
- (f) Whether the activity will adversely affect or will enhance significant historical and

archaeological resources under the provisions of s.267.061, F.S.; and

(g) The current condition and relative value of functions being performed by areas affected by the proposed activity.

(2) When determining whether the applicant has provided reasonable assurances that District permitting standards will be met, the District shall take into consideration the applicant's violation of any District rules adopted pursuant to Part IV, chapter 373, F.S., relating to any other project or activity, and efforts taken by the applicant to resolve these violations.

(3) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters as set forth in ss.12.2.8 through 12.2.8.2, Environmental Resource Permit Applicant's Handbook.

(4) Located in, adjacent to or in close proximity to Class II waters or located in Class II waters or Class III waters classified by the Department as approved, restricted or conditionally restricted for shellfish harvesting as set forth in or incorporated by reference in chapter 16R-7, F.A.C., will comply with the additional criteria in ss.12.2.5 of the Applicant's Handbook adopted by reference in s.40B-400.091, F.A.C.

(5) Which constitute vertical seawalls in estuaries or lagoons, will comply with the additional criteria provided in ss.12.2.6 of the Applicant's Handbook.

PROPOSED EFFECTIVE DATE IS OCTOBER 3, 1995.

Specific Authority 373.044, 373.113, 373.118 FS.

Law Implemented 373.118, 373.413, 373.416, 373.426 FS.

History--New 10-3-95.

40B-400.115 Limiting Conditions

(1) The following general conditions shall be a part of all permits issued pursuant to this chapter and chapter 40B-4, F.A.C., unless waived or modified by the Board upon a determination that the conditions are inapplicable to the activity authorized by the permit.

(a) All activities shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit.

(b) This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications, shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.

(c) Activities approved by this permit shall be conducted in a manner which do not cause violations of state water quality standards.

(d) Prior to and during construction, the permittee shall implement and maintain all erosion and sediment control measures (best management practices) required to retain sediment on-site and to prevent violations of state water quality standards. All practices must be in accordance with the guidelines and specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988), which is incorporated by reference, unless a project specific erosion and sediment control plan is approved as part of the permit, in which case the practices must be in accordance with the plan. If site specific conditions require additional measures during any phase of construction or operation to prevent erosion or control sediment, beyond those specified in the erosion and sediment control plan,

the permittee shall implement additional best management practices as necessary, in accordance with the specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988). The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

(e) Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased.

(f) At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District a Construction Commencement Notice Form No. 40B-1.901(19) indicating the actual start date and the expected completion date.

(g) When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an Annual Status Report Form No. 40B-1.901(20). These forms shall be submitted during June of each following year.

(h) For those systems which will be operated or maintained by an entity requiring an easement or deed restriction in order to provide that entity with the authority necessary to operate or maintain the system, such easement or deed restriction, together with any other final operation or maintenance documents as are required by ss.40B-4.2030(2)(g), F.A.C., and s.40B-4.2035, F.A.C., must be submitted to the District for approval. Documents meeting the requirements set forth in these subsections of District rules will be approved. Deed restrictions, easements and other operation and maintenance documents which require recordation either with the Secretary of State or Clerk of the Circuit Court must be so recorded prior to lot or unit sales within the project served by the system, or upon completion of construction of the system, whichever occurs first. For those systems which are proposed to be maintained by county or municipal entities, final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local governmental entity. Failure to submit the appropriate final documents referenced in this paragraph will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system.

(i) Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of that phase or portion of the system to a local government or other responsible entity.

(j) Within 30 days after completion of construction of the permitted system, or independent portion of the system, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the supplied As-Built Certification Form. When the completed system differs substantially from the permitted plans, any substantial deviations shall be noted and explained and two copies of as-built drawings submitted to the District. Submittal of the completed form shall serve to notify the District that the system is ready for inspection. The statement of completion and certification shall be based on on-site observation of construction (conducted by the registered professional engineer, or other appropriate individual as authorized by law, or under his or her direct supervision) or review of as-built drawings for the purpose of determining if the work was completed in compliance with approved plans and specifications. As-built drawings shall be the permitted drawings revised to reflect any changes made during construction. Both the original and any revised specifications must

be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor. The following information, at a minimum, shall be verified on the as-built drawings:

1. Dimensions and elevations of all discharge structures including all weirs, slots, gates, pumps, pipes, and oil and grease skimmers;
2. Locations, dimensions, and elevations of all filter, exfiltration, or underdrain systems including cleanouts, pipes, connections to control structures, and points of discharge to the receiving waters;
3. Dimensions, elevations, contours, or cross-sections of all treatment storage areas sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems, when appropriate;
4. Dimensions, elevations, contours, final grades, or cross-sections of the system to determine flow directions and conveyance of runoff to the treatment system;
5. Dimensions, elevations, contours, final grades, or cross-sections of all conveyance systems utilized to convey off-site runoff around the system;
6. Existing water elevation(s) and the date determined; and
7. Elevation and location of benchmark(s) for the survey.

(k) The operation phase of this permit shall not become effective until the permittee has complied with the requirements of the condition in paragraph (i) above, the District determines the system to be in compliance with the permitted plans, and the entity approved by the District in accordance with s.40B-4.2035 accepts responsibility for operation and maintenance of the system. The permit may not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall request transfer of the permit to the approved responsible operation and maintenance operating entity if different from the permittee. Until the permit is transferred pursuant to chapter 40B-4.1103, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

(l) Should any other regulatory agency require changes to the permitted system, the permittee shall provide written notification to the District of the changes prior to implementation so that a determination can be made whether a permit modification is required.

(m) This permit does not eliminate the necessity to obtain any required federal, state, local and special District authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and in this chapter and chapter 40B-4, F.A.C.

(n) The permittee is hereby advised that s.253.77, F.S., states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.

(o) The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the activities authorized by the permit or any use

of the permitted system.

(p) Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under s.373.421(2), F.S., provides otherwise.

(q) The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of chapter 40B-4.1130, F.A.C. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale, conveyance or other transfer.

(r) Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.

(s) If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the District.

t) (The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

(2) In addition to those general conditions set forth in ss.(1), the Governing Board may impose on any permit granted under this chapter and chapter 40B-4, F.A.C., such reasonable project-specific conditions as are necessary to assure that the permitted system will not be inconsistent with the overall objectives of the District or be harmful to the water resources of the District. Upon receipt of notice of intended agency action, any substantially affected person shall have the right to request a hearing in accordance with s.40B-1.511 and 40B-1.521, F.A.C.

PROPOSED EFFECTIVE DATE IS OCTOBER 3, 1995.

Specific Authority 373.044, 373.113, 373.118 FS.

Law Implemented 373.118, 373.413, 373.416, 373.426 FS.

History--New 10-3-95.

40B-400.191 Variances.

(1) The Governing Board is authorized to grant a variance from the provisions of s.373.414, F.S., and paragraph 40B-400.103(1)(e) and s.40B-400.104, F.A.C., pursuant to s.403.201, F.S.

(2) A person seeking a variance must demonstrate that any hardship asserted as the basis of the need for a variance is peculiar to the affected property and not self-imposed and that the grant of a variance will be consistent with the general intent and purpose of this chapter.

(3) Any person seeking a variance shall file a petition for a variance that shall contain the following information:

(a) The petitioner's name and signature.

(b) The statute or rule from which the variance is sought.

(c) Facts showing that a variance should be granted for one of the reasons in s.403.201, F.S.

(d) The time period for which the variance is sought, including the reasons and facts supporting the time period.

(e) The requirements which the petitioner can meet including the date or time when the requirements will be met.

(f) The steps or measures the petitioner is taking to meet the requirement from which the variance is sought. If the request is pursuant to paragraph 40B-400.191(1)(b) above, the petitioner shall include a schedule when compliance will be achieved.

(g) The social, economic and environmental impacts on the applicant, residents of the area and of the state if the variance is granted.

(h) The social, economic and environmental impacts on the applicant, residents of the area and of the state if the variance is denied.

(4) The District shall review the application within a reasonable period of time after receipt to determine if the application is complete. If the application is determined to be incomplete, the applicant shall be afforded an opportunity to supply additional information before the District evaluates the merits of the request.

(5) The District shall prepare a notice of intended agency action regarding the petition for a variance. The District shall publish this notice one time in the Florida Administrative Weekly, and one time in a newspaper of general circulation, as defined in s.50.031, F.S., in the county in which the property for which the variance is sought is located.

(6) Renewals of variances shall be applied for in the same manner as the initial variance.
PROPOSED EFFECTIVE DATE IS OCTOBER 3, 1995.

Specific Authority 373.044, 373.113, 373.414(9), 373.414(17) FS.

Law Implemented 373.118, 373.413, 373.416, 373.426 FS.

History--New 10-3-95.