

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
RULES ADOPTED FOR USE BY DEP**

CHAPTER 40C-4, F.A.C.

**ENVIRONMENTAL RESOURCE PERMITS:
SURFACE WATER MANAGEMENT SYSTEMS**

[Note: the rules below are the sections of Chapter 40C-4, F.A.C., incorporated by reference in paragraph 62-330.200(2)(b), F.A.C., effective on 8-1-10 for use by the Department within the SJRWMD. This document reflects the sections of Chapter 40C-4, F.A.C., in effect through 2-16-10, together with changes made to those rules through paragraph 62-330.200(2)(b), F.A.C., effective 8-1-10. Every attempt has been made to accurately merge the text of those rules; however, if any errors exist in this document, the actual adopted text of 40C-4, F.A.C., as adopted on 2-16-10, together with the actual text of Chapter 62-330, F.A.C., as amended on 8-1-10, will control.]

40C-4.011	Policy and Purpose.
40C-4.021	Definitions.
40C-4.031	Implementation.
40C-4.041	Permitting Required.
40C-4.051	Exemptions.
40C-4.091	Publications Incorporated by Reference
40C-4.301	Conditions for Issuance of Permits.
40C-4.302	Additional Conditions for Issuances of Permits.
40C-4.381	Limiting Conditions
40C-4.751	Enforcement.

40C-4.011 Policy and Purpose.

(1) It is the policy of the Board to regulate and control the management and storage of surface waters throughout the District according to the provisions of Chapter 373, F.S., and in a manner consistent with Chapter 62-40, F.A.C.

(2) The purpose of Chapter 40C-4, F.A.C., is to implement the permitting program contemplated in Part IV, Chapter 373, F.S., in a manner which is consistent with the objectives and policies of the St. Johns River Water Management District and the declared water policy of the State of Florida.

(3) It is the policy of the District to foster agricultural, commercial, industrial and residential growth in a manner consistent with the objectives of the District.

(4) It is the policy of the District to recognize that the soil and water conservation districts established by Chapter 582, F.S., play an important role in preventing soil erosion and floodwater and sediment damages.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, Part IV, Ch. 373 FS. History--New 1-31-77, Formerly 16I-4.01 and 40C-4.01, Amended 2-3-81, 12-7-83, Formerly 40C-4.011, 40C-4.0011.

40C-4.021 Definitions.

When appearing in this chapter or in Chapter 40C-40, 40C-41, 40C-42, 40C-44 or 62-341, F.A.C., the following words shall mean:

(1) "Abandon" or "abandonment" means cessation of use and maintenance activities or responsibility for a system, or part of a system.

(2) "Alter" means to extend a dam or works beyond maintenance in its original condition, including changes which may increase or diminish the flow or storage of surface water which may affect the safety of such dam or works.

(3) "Appurtenant works" means any artificial improvements to a dam which might affect the safety of such dam or, when employed, might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam.

(4) "Aquatic preserve" means those areas designated in Part II, Chapter 258, F.S.

(5) "Coastal waters" means waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state.

(6) "Conceptual approval permit" means a surface water management permit issued by the Department, approving the concept of a master plan for a surface water management system, which is binding upon the Department and the permittee.

(7) "Construction" means any activity including land clearing, earth moving or the erection of structures which will result in the creation of a system.

(8) "Dam" means any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state.

(9) "Drainage ditch" or "irrigation ditch" means a man-made trench which is dug for the purpose of draining water from the land or for transporting water for use on the land and which is not built for navigational purposes.

(10) "Dredging" means excavation, by any means, in surface waters or wetlands, as delineated in subsection 373.421(1), F.S. It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in subsection 373.421(1), F.S., directly or via an excavated water body or series of water bodies.

(11) "Environmental resource permit" means a conceptual approval, general, or individual permit for a surface water management system issued pursuant to Part IV of Chapter 373, F.S.

(12) "Estuary" means a semi-enclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems.

(13) "Filling" means the deposition, by any means, of materials in surface waters or wetlands, as delineated in subsection 373.421(1), F.S.

(14) "Ground water" means water beneath the surface of the ground, whether or not flowing through known and definite channels.

(15) "Hydrologically sensitive areas" means wetlands and those geographical areas which are specifically designated as hydrologically sensitive areas by the Board because of the importance of the hydrology and hydraulics of the area in meeting the Legislative policy contained in Section 373.016, F.S.

(16) "Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

(17) "Incidental Site Activities" means the following activities in uplands which are conducted as part of the construction of a system proposed in an environmental resource permit application: land clearing; grading; excavation of borrow areas for on-site grading; erosion and sediment control measures; road and building subgrade construction (excluding foundation construction); unpaved access road construction; utility installation; fence installation; construction trailer installation; and other similar activities.

(18) "Insect control impoundment dikes" means artificial structures, including earthen berms, constructed and used to impound wetlands or other surface waters for the purpose of insect control.

(19) "Lagoon" means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier.

(20) "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 Regulations 17.12 (as amended April 8, 2004), when such plants are found to be located in a wetland or other surface water.

(21) "Maintenance" or "repairs" means remedial work of a nature as may affect the safety of any dam, impoundment, reservoir, or appurtenant work or works, but excludes routine custodial maintenance.

(22) "Other surface waters" means surface waters as described and delineated pursuant to Rule 62-340.600, F.A.C., as ratified by Section 373.4211, F.S., other than wetlands.

(23) "Project area" means the area being modified or altered in conjunction with a proposed activity requiring a permit.

(24) "Remove" or "removal" means cessation of use and maintenance activities for a system, or part of a system, accompanied by elimination of all or part of the system.

(25) "Reservoir" means any artificial or natural holding area which contains or will contain the water impounded by a dam.

(26) "Stormwater management system" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

(27) "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 subsections 373.403(13) and 373.403(14), F.S.

(28) "Total land area" means land holdings under common ownership which are contiguous or land holdings which are served by common surface water management facilities.

(29) "Traversing work" means any artificial structure or construction that is placed in or across a stream or other watercourse, or an impoundment.

(30) "Water" or "waters in the state" means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

(31) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. The landward extent of wetlands is delineated pursuant to Rules 62-340.100 through 62-340.550, F.A.C., as ratified by Section 373.4211, F.S.

(32) "Works" means all artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.

Rulemaking Authority 373.044, 373.113, 373.414, 373.418 FS. Law Implemented 373.016, 373.019, 373.403, 373.413, 373.414, 373.416, 373.418, 373.426, 403.813(2) FS. History--New 1-31-77, Formerly 161-4.02, 40C-4.02. Amended 2-3-81, 12-7-83, Formerly 40C-4.021, 40C-4.0021. Amended 9-25-91, 2-27-94, 10-3-95, 10-11-01, 10-29-09.

40C-4.031 Implementation.

(1) The effective dates for the permitting program as established in this chapter pursuant to Part IV of Chapter 373, F.S., are:

(a) January 31, 1977 in that area transferred to the District from the Central and Southern Florida Flood Control District, now the South Florida Water Management District, pursuant to Section 373.069(3), F.S. (Supp. 1976), within the Greater St. Johns River Basin, known as the Upper St. Johns River Basin (see Figure 4-1).

(b) January 31, 1977 in that area transferred to the District from the Southwest Florida Water Management District pursuant to Section 373.069(3), F.S., (Supp. 1976), within the Oklawaha River Basin (see Figure 4-1).

(c) December 7, 1983 in the remaining area of the District not described in paragraph (a) or (b) above and as described in Section 373.069(2)(c), F.S. (see Figure 4-1).

(d) August 11, 1991, for agricultural stormwater management systems.

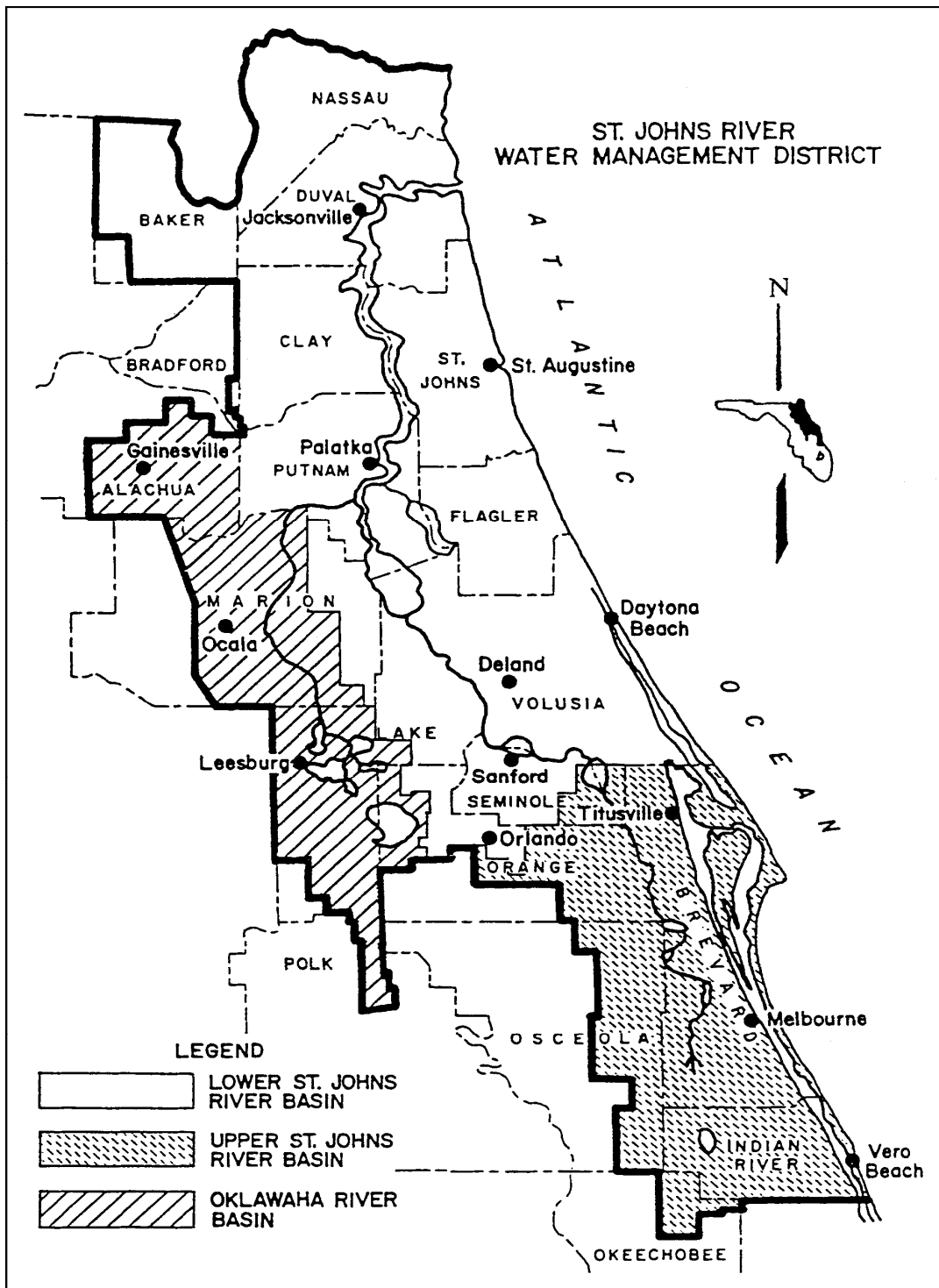


Figure 4-1 Areas Within the District Having Differing Effective Dates for Implementation of Management and Storage of Surface Water Rules

(2)(a) The program initiated on January 31, 1977, with its limited areas of implementation, is superseded throughout the entire District by the rules that became effective on December 7, 1983.

(b) Each permit issued under the provisions of the program initiated on January 31, 1977 remains valid after December 7, 1983, subject to all limiting conditions attached thereto.

(c) Any permit application received prior to November 15, 1983 will be processed and evaluated under the provisions of the permitting program initiated on January 31, 1977. Any permit application received on or after November 15, 1983 will be processed and evaluated under the provisions of the rules that become effective on December 7, 1983.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.413, 373.416, 373.426 FS. History—New 1-31-77, Formerly 16I-4.03, 40C-4.03, Amended 2-3-81, 12-7-83, Formerly 40C-4.031, 40C-4.0031, Amended 8-11-91, 10-3-95, 11-11-03.

40C-4.041 Permits Required.

(1) Unless expressly exempt, an individual or general environmental resource permit must be obtained from the Department under Chapters 40C-4, 40C-40, 40C-42, 40C-44 or 62-341, F.A.C., prior to the construction, alteration, operation, maintenance, abandonment or removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works, including dredging or filling, and for the maintenance and operation of existing agricultural surface water management systems or the construction of new agricultural surface water management systems.

(2) The Department issues four types of environmental resource permits: conceptual approval permits, individual permits, standard permits, and general permits.

(a) A conceptual approval permit may be issued for projects that are to be developed in phases. A letter of conceptual approval does not authorize any construction.

(b) An individual, standard, or general permit is required prior to the construction, alteration, operation, maintenance, abandonment or removal of a surface water management system which:

1. Is capable of impounding a volume of water of forty or more acre feet; or
2. Serves a project with a total land area equal to or exceeding forty acres; or
3. Serves a project with a total land area equal to or exceeding ten acres, when any part of the project is located within the Wekiva River Hydrologic Basin north of State Road 436, within the Econlockhatchee River Hydrologic Basin, within the Tomoka River Hydrologic Basin, or within Spruce Creek Hydrologic Basin; or
4. Provides for the placement of twelve or more acres of impervious surface which constitutes 40 or more percent of the total land area; or
5. Provides for the placement of one half acre or more of impervious surface, when any of the impervious surface is located within the Wekiva River Hydrologic Basin north of State Road 436; or
6. Provides for the placement of two acres or more of impervious surface, when any of the impervious surface is located within the Econlockhatchee River Hydrologic Basin, the Tomoka River Hydrologic Basin, or within the Spruce Creek Hydrologic Basin; or
7. Is wholly or partially located within the Wekiva River Hydrologic Basin's Riparian Habitat Protection Zone as described in paragraph 40C-41.063(3)(e); or
8. Is wholly or partially located in, on, or over any wetland or other surface water, excluding the following activities:

a. Filling any ditch that was constructed in uplands and which provides drainage or water conveyance only for areas owned or controlled by the person performing the filling; or

b. Construction and alteration of outfall pipes less than 20 feet in length in wetlands or other surface waters, and associated headwalls, erosion control devices, and energy dissipation structures.

(c) A permit will be issued for specific classes of surface water management systems which satisfy the thresholds and conditions of Chapters 40C-40 or 62-341, F.A.C. Standard permits are issued pursuant to Chapter 40C-40, F.A.C. Noticed general permits are issued pursuant to Chapter 62-341, F.A.C. A standard or general permit may authorize the construction, alteration, operation, maintenance, abandonment, or removal of a system.

(d) Projects which do not qualify for permits under the provisions of Chapter 40C-40 or 62-341, F.A.C., may qualify for an individual permit under Chapter 40C-4, F.A.C. An individual permit may authorize the construction, alteration, operation, maintenance, abandonment or removal of a system.

(e) Individual or standard general permits are issued under Chapter 40C-44, F.A.C., for the maintenance and operation of existing agricultural surface water management systems or the construction of new agricultural surface water management systems which satisfy the water quality practices and performance standards of Chapter 40C-44, F.A.C.

(f) The construction, alteration, operation, maintenance, abandonment or removal of a stormwater management system which falls below the thresholds in paragraph (2)(b) may qualify for an individual or standard general permit under Chapter 40C-42, F.A.C.

(g) Any dredging or filling in, on or over surface waters of the state which is authorized by a general or individual permit issued under Chapters 40C-4, 40C-40, or 40C-42, F.A.C., as such chapters existed prior to 10-3-95, but which is not authorized by a permit or exemption under Chapter 62-312, F.A.C., as such chapter existed prior to 10-3-95, shall require an environmental resource permit prior to the dredging or filling. However, such dredging or filling shall be exempt from the requirements of paragraphs 40C-4.301(1)(a) through (e) and (g) through (k), F.A.C., and Chapter 40C-42, F.A.C., except that dredging or filling within the Tomoka River Hydrologic Basin or the Spruce Creek Hydrologic Basin shall meet the criteria of paragraph 40C-4.301(1)(k), F.A.C.

(3) This subsection is not adopted for use by the Department.

(4)(a) The Governing Board may designate specific geographic areas within which permits shall be required for the construction, alteration, operation, maintenance, removal, or abandonment of any systems with threshold volumes and areas different from those specified in paragraph (2)(b) above.

(b) Such designation shall be adopted by rule pursuant to Chapters 120 and 373, F.S., and Chapter 40C-1, F.A.C.

(c) Prior to the adoption of such rule, the Governing Board shall hold at least one public meeting in the vicinity of the area for which such designation is proposed. The purpose of the meeting shall be to hear testimony regarding the justification and anticipated impacts of the designation.

Specific Authority 373.044, 373.113, 373.118, 373.406, 373.4136, 373.414, 373.415, 373.418, 380.06(9) FS. Law Implemented 373.083, 373.118, 373.406, 373.413, 373.4135, 373.4136, 373.414, 373.415, 373.416, 373.418, 373.426, 380.06(9) FS. History--New 1-31-77, Formerly 161-4.04, 40C-4.04, Amended 2-3-81, 12-7-83, Formerly 40C-4.041, 40C-4.0041, Amended 8-28-88, 8-1-89, 4-3-91, 8-11-91, 9-25-91, 10-20-92, 2-27-94, 10-3-95, 11-25-98, 10-11-01.

40C-4.051 Exemptions.

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

(2) Specifically exempted from permitting under this chapter for the purpose of construction, operation, and maintenance are:

(a) Each system or phase of a phased system which is located in the areas described in paragraphs 40C-4.031(1)(a) and (b), F.A.C., except agricultural operations, which:

1. Was constructed and operating under the provisions of a valid District permit on December 7, 1983; or

2. Was not required to obtain a permit prior to December 7, 1983, and was:

a. Constructed and operating prior to December 7, 1983; or

b. Being constructed on December 7, 1983, and was completed and operating by June 7, 1984; or

c. Under construction on December 7, 1983, and which had complied with the regulations of the Florida Department of Environmental Regulation and the appropriate local governmental agency.

3. Was constructed and operating as of March 2, 1974 for the Upper St. Johns Basin as described in paragraph 40C-4.031(1)(a), F.A.C.; or

4. Was constructed and operating as of January 1, 1975 for the portion of the Ocklawaha River Basin as described in paragraph 40C-4.031(1)(b), F.A.C.

(b) Each system or phase of a phased system which is located in the area as described in paragraph 40C-4.031(1)(c), F.A.C., except agricultural operations, and which was:

1. Constructed and operating prior to December 7, 1983; or

2. Being constructed on December 7, 1983, and was completed and operating on June 7, 1984; or

3. Under construction on December 7, 1983, and which had complied with the regulations of the Florida Department of Environmental Regulation and the appropriate local governmental agency and was completed December 7, 1984.

(c) The exemptions listed in paragraphs (2)(a) and (b) above apply only to those systems or phases of a phased system as such systems are set forth in its plans, specifications and performance criteria prepared and existing as of 12-7-83 and to the extent:

1. Construction of such system is completed, within the applicable time frames, in accordance with such plans, specifications and performance criteria; and

2. Such system is maintained and operated in a manner consistent with such plans, specifications and performance criteria.

(3) The exemptions listed in subsection (2) above shall not apply to those systems or phases of a phased system which on 12-7-83 have been abandoned or removed or have ceased to operate as set forth in such system's plans, specifications and performance criteria.

(4) Those systems or phases of a phased system exempted by subsection (2) above shall not be required to obtain a permit for construction, operation or maintenance.

(a) Any alteration of such system, or a portion thereof (including the rebuilding of such system if it has ceased to operate as set forth in such system's plans, specifications and performance criteria), shall require that a permit be obtained for such alteration, which permit shall include an authorization to alter as well as an authorization to operate and maintain such alteration. For purposes of this subsection, the following are not considered to be alterations, and consequently are not required to be permitted:

1. The relocation of pumps, provided that the pump is not moved out of the immediate vicinity of its existing location, not to another drainage basin or subbasin, and operation of the pump at the new location will not result in increased adverse impacts to the water resource.

2. The installation of driveway and road inlets and pipes with a diameter of less than 60 inches or equivalent size within an existing surface water management system, provided that the pipe or inlet will not increase the volume of water discharged, and causes no upstream or downstream flooding.

3. The change of the location of a drainage system's secondary or tertiary drainage ditches provided that the total linear length and cross-sectional dimensions of the ditches are not changed.

4. Roadways not located in wetlands may be widened provided that fill material is not obtained by excavating ditches next to the roadway, and provided that the roadway is otherwise constructed in accordance with accepted engineering practices. Roadways not located in wetlands may be increased in height provided that the elevation of the existing centerline road grade is above the 10 year flood elevation, and provided that no increase in upstream flooding is caused.

(b) Any abandonment or removal of such system or portion thereof, shall require that a permit be obtained for such abandonment or removal.

(5) The permitting thresholds set forth in subparagraph 40C-4.041(2)(b)6., F.A.C., and that part of subparagraph 40C-4.041(2)(b)3., F.A.C., which concerns the Econlockhatchee River Hydrologic Basin shall be inapplicable to systems located wholly or partially in the Econlockhatchee River Hydrologic Basin which meet the conditions for exemption set forth in subsections 40C-41.051(1) - (5), F.A.C.

(6) The permitting thresholds set forth in subparagraph 40C- 4.041(2)(b)6., F.A.C., and that part of subparagraph 40C-4.041(2)(b)3., F.A.C., which concerns the Econlockhatchee River Hydrologic Basin shall be inapplicable to systems which consist of public road shoulder paving, outside the Riparian Habitat Regulation Zone, which do not result in the creation of additional traffic lanes, and systems which consist of public road turn lane construction outside the Riparian Habitat Regulation Zone.

(7) The permitting thresholds set forth in that part of subparagraphs 40C-4.041(2)(b)3., and 6., which concern the Tomoka River and Spruce Creek Hydrologic Basins shall be inapplicable to the following systems located wholly or partially in the Tomoka River Hydrologic Basin or the Spruce Creek Hydrologic Basin;

(a) Those systems which meet the conditions for exemption set forth in subsection 40C-41.051(2), F.A.C.

(b) Those systems which consist of public road shoulder paving, outside the Riparian Habitat Protection Zone, which do not result in the creation of additional traffic lanes, and systems which consist of public road turn lane construction outside the Riparian Habitat Protection Zone.

(8) The amendments to subsections 10.7.2, 10.7.4, 10.7.5, 16.1.3 and 16.1.5, Applicant's Handbook: Management and Storage of Surface Waters, effective 9-25-1991, shall not apply to each system for which the District or the Department has issued an individual or general permit pursuant to Chapter 40C-4 or 40C-40, F.A.C., prior to 9-25-

1991. This subsection applies only to the project area and plan approved in the referenced permit; however, where the referenced permit authorizes construction of a master system for drainage and flood control, this subsection shall apply to the project area served by the master system and to the plan approved in the referenced permit.

(9) The amendments to subsections 10.7.2, 10.7.4, 10.7.5, 16.1.3 and 16.1.5, Applicant's Handbook: Management and Storage of Surface Waters, effective 9-25-1991 shall not apply to each system for which the District or Department has issued, pursuant to Chapter 40C-4, F.A.C., and prior to 9-25-1991, both a conceptual approval permit and at least one permit authorizing construction consistent with the conceptual approval permit. This subsection applies only to the project area and plan approved in the referenced conceptual approval permit.

(10) The permitting threshold set forth in subparagraph 40C-4.041(2)(b)8., F.A.C., as it existed on 9-25-91 regarding isolated wetlands and the amendments to subsections 10.7.2, 10.7.4, 10.7.5, 16.1.5, Applicant's Handbook: Management and Storage of Surface Waters, effective 9-25-1991 shall not apply to each system for which the District or Department has issued a permit pursuant to Chapter 40C-42, F.A.C., prior to 9-25-1991. This subsection applies only to a system which did not require a permit pursuant to Chapter 40C-4, or 40C-40, F.A.C., prior to 9-25-1991 and only to the project area and the plan approved in the referenced permit.

(11) The amendments to section 10.3.2 of the Applicant's Handbook: Management and Storage of Surface Waters effective February 27, 1994, shall not apply to any general or individual permit application pursuant to Chapters 40C-4, or 40C-40, F.A.C., which is complete prior to February 27, 1994.

(12) No permit shall be required under Chapter 40C-4, 40C-40, 40C-42, 40C-44, or 62-341, 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 Rule 62-4.242, F.A.C.

(b) Maintenance activities as set forth in paragraphs 403.813(2)(f) and (g), F.S. The Department's interpretation and implementation of these exemptions is explained in section 3.4.1(e), Applicant's Handbook: Management and Storage of Surface Waters.

(c) Maintenance of minor silvicultural surface water management systems as described in subsection 62-341.500(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 that part, provided such maintenance is conducted in accordance with the performance standards set forth in subsection 62-341.500(5), F.A.C.

(d) 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 6 months each year, beginning September 1 and ending February 28. 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.

(e) THIS PARAGRAPH NOT ADOPTED FOR USE BY THE DEPARTMENT; ITS PROVISIONS ARE COMBINED WITH PARAGRAPH (f) IN THE RULES ADOPTED BY REFERENCE FOR THE DEPARTMENT.

(f) The installation, replacement or repair of mooring pilings and dolphins associated with private docking facilities or piers and the installation and repair of private docks, piers, and recreational docking facilities, or piers and recreational docking facilities of local governmental entities when the local governmental entity's activities will not take place in any manatee habitat, any of which structures have 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 which are located in Outstanding Florida Waters. This exemption shall include the construction and repair 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, non-commercial 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; 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 dock under this exemption does not require the Department to issue a subsequent permit to construct a channel to provide navigational access to the dock. Activities associated with a 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.

(g) Construction of private docks of 1,000 square feet or less of over-water surface area in artificially created waterways where construction will not violate water quality standards, impede navigation, or adversely affect flood control.

(h) 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.

(i) 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 Section 373.069, F.S., and artificially created portions of the Florida Intracoastal Waterway.

(j) 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.

(k) The restoration of a seawall or riprap at its previous location or upland of or within 18 inches waterward of its previous location, as measured from the face of the existing seawall slab to the face of restored seawall slab or from the front slope of the existing riprap to the front slope of the restored riprap. 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. This exemption shall be limited to functioning seawalls or riprap. This exemption shall not affect the permitting requirements of Chapter 161, F.S.

(l) The construction seawalls or rip rap in wetlands or other surface waters, 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. In estuaries and lagoons, construction of vertical seawalls is limited to the circumstances and purposes stated in Section 373.414(5)(b)1. - 4., F.S.

(m) 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.

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

(o) 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 10 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.

(p) 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.

(q) 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 Section 327.40, F.S.

(r) Construction of freshwater fish attractors by Florida Fish and Wildlife Conservation 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, grease, 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 (3) feet below the surface of the water at ordinary 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.

(s) 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.

(t) The construction or maintenance of culverted driveway and 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 62-341, 40C-40, 40C-42, 40C-44, F.A.C., or this chapter;

3. The artificial waterway in existing condition shall be not more than 4 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 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 3 feet horizontal to 1 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, 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, 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 7 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 Chapters 40C-4, 40C-40, 40C-42, and 40C-44, 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 2 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.

(u) The installation, removal, and replacement of utility poles that support telephone or communication cable lines, or electric distribution lines of 35kV 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 ac.;

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, or in riparian habitat protection zones established in Chapter 40C-41, F.A.C.;

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, associated 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 Department 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.

(13) Exemptions for Treatment or Disposal Systems.

(a) Alteration and maintenance of the following shall be exempt from the provisions in Chapter 40C-4, F.A.C., implementing subsections 373.414(1) through 373.414(6), 373.414(8), and 373.414(10), F.S.; and subsection 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 Section 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 Rules 62-28.700, 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 Section 403.0885, F.S., or rules implementing Section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 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 Rules 62-28.700, 62-302.520, or Chapter 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 Section 403.0885, F.S., or rules implementing Section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 62-611, F.A.C., or Section 403.0885, F.S., or its implementing rules;

3. Works, impoundments, reservoirs, and other watercourses of less than 0.5 acres 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 Rule 62-25.042), 62-330, 40C-4, 40C-42 (excluding Rule 40C-42.0265), F.A.C., except those permitted as wetland stormwater treatment systems.

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 was required under Chapters 62-25, 40C-4, 40C-42, or 40C-44, F.A.C.

(b) Alteration and maintenance of the following shall be exempt from the provisions in Chapter 40C-4, F.A.C., adopted to implement subsections 373.414(1), 373.414(2)(a), 373.414(8), and 373.414(10), F.S.; and subsections 373.414(3) through 373.414(6), F.S.; and subsection 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 Section 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 Rule 62-25.042), 62-330, 40C-4, 40C-42 (excluding Rule 40C-42.0265) or 40C-44, F.A.C., except those permitted as wetland stormwater treatment systems.

2. Works, impoundments, reservoirs, and other watercourses of 0.5 acres or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment before a permit was required under Chapter 62-25, 40C-4, 40C-42, or 40C-44, 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 thresholds in subparagraph 40C-4.041(2)(b)8. or paragraph 40C-40.302(2)(c), 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 Section 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 subsection 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, 40C-4, 40C-42 or 40C-44, F.A.C. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal.

(14) 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 Chapter 40C-4, F.A.C., adopted to implement subsections 373.414(1) - (6), 373.414(8), and 373.414(10), F.S.; and subsection 373.414(7), F.S., regarding any authority granted pursuant to Section 373.414, F.S. (1991).

(15) 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 and Department rules.

Specific Authority 373.044, 373.113, 373.414, 373.415, 373.418 FS. Law Implemented 373.406, 373.413, 373.414, 373.415, 373.416, 373.418, 373.426, 403.813(2) FS. History--New 1-31-77, Formerly 16I-4.05, 40C-4.06, Amended 2-3-81, 12-7-83, Formerly 40C-4.051, 40C-4.0051, Amended 4-3-91, 8-11-91, 9-25-91, 5-17-94, 10-3-95, 11-25-98, 7-8-01, 10-11-01, 11-11-03.

40C-4.091 Publications Incorporated by Reference.

(1) The Governing Board hereby adopts by reference:

(a) Part I "Policy and Procedures," Part II "Criteria for Evaluation," subsections 18.0, 18.1, 18.2, and 18.3 of Part III and Appendix K "Legal Description Upper St. Johns River Hydrologic Basin," "Legal Description Ocklawaha River Hydrologic Basin," "Legal Description of the Wekiva River Hydrologic Basin," "Legal Description of the Wekiva Recharge Protection Basin," "Legal Description of the Econlockhatchee River Hydrologic Basin," "Legal Description of the Sensitive Karst Areas Basin, Alachua County," "Legal Description Tomoka River Hydrologic Basin," "Legal Description Spruce Creek Hydrologic Basin," "Legal Description of the Sensitive Karst Areas Basin, Marion County," and "Legal Description of the Lake Apopka Hydrologic Basin," and Appendix M "Regional Watersheds for Mitigation Banking," of the document entitled "Applicant's Handbook: Management and Storage of Surface Waters," effective February 16, 2010.

(b) Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between St. Johns River Water Management District and Department of Environmental Protection dated July 1, 2007.

(c) THIS SECTION NOT ADOPTED FOR USE BY THE DEPARTMENT

(d) The following Natural Resources Conservation Service Soil Survey publications: Soil Survey of Flagler County Area, Florida (1997); Soil Survey of Lake County Area, Florida (1975); Soil Survey of Orange County Area, Florida (1989); Soil Survey of Seminole County Area, Florida (1990); and Soil Survey of Volusia County Area, Florida (1980), which are hereby incorporated by reference, effective 12-3-06.

(2) The documents may be obtained by contacting:

Florida Department of Environmental Protection
Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7577

Florida Department of Environmental Protection
Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Florida Department of Environmental Protection
Southwest District
13051 N. Telecom Parkway
Temple Terrace, Florida 33637-0926

Rulemaking Authority 369.318, 373.044, 373.046(4), 373.113, 373.4136, 373.414, 373.415, 373.416, 373.418, 373.421, 375.461 FS. Law Implemented 120.60, 369.316, 369.318, 373.016(2), 373.042, 373.0421, 373.046, 373.085, 373.086, 373.103, 373.109, 373.146(1), 373.406, 373.413, 373.4135, 373.4136, 373.414, 373.4141, 373.415, 373.416, 373.417, 373.418, 373.421(2) - (6), 373.423, 373.426, 373.461(3), 380.06(9), 403.813(2) FS. History—New 12-7-83, Amended 10-14-84, Formerly 40C-4.091, Amended 5-17-87, Formerly 40C-4.0091, Amended 8-20-87, 10-1-87, 10-11-87, 11-26-87, 8-30-88, 1-1-89, 8-1-89, 10-19-89, 4-3-91, 9-25-91, 11-12-91, 3-1-92, 7-14-92, 9-8-92, 9-16-92, 11-12-92, 11-30-92, 1-6-93, 1-23-94, 2-27-94, 11-22-94, 10-3-95, 8-20-96, 11-25-98, 12-3-98, 1-7-99, 1-11-99, 8-21-00, 7-8-01, 10-11-01, 4-10-02, 9-26-02, 3-7-03, 11-11-03, 2-1-05, 12-3-06, 7-1-07, 5-13-08, 11-5-08, 10-29-09, 2-16-10.

40C-4.301 Conditions for Issuance of Permits.

(1) In order to obtain a standard, individual, or conceptual approval permit under this chapter or Chapter 40C-40, 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 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including any antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 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 established in Chapter 40C-8, F.A.C.;
- (h) Will not cause adverse impacts to a work of the District established pursuant to Section 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 in Chapter 40C-41, F.A.C.

(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 subsection 12.2.4.5 of the Applicant's Handbook: Management and Storage of Surface Waters.

(3) The standards and criteria, including the mitigation provisions and the provisions for elimination or reduction of impacts, contained in the Applicant's Handbook: Management and Storage of Surface Waters adopted by reference in Rule 40C-4.091, F.A.C., shall determine whether the reasonable assurances required by subsection 40C-4.301(1) and Rule 40C-4.302, F.A.C., have been provided.

Specific Authority 369.318, 373.016, 373.044, 373.113, 373.171, 373.415 FS. Law Implemented 369.318, 373.016, 373.042, 373.0421, 373.409, 373.413, 373.414, 373.415, 373.416, 373.418, 373.426, 373.461 FS. History--New 1-31-77, Formerly 16I-4.10, 40C-4.10, Amended 2-3-81, 12-7-83, Formerly 40C-4.301, 40C-4.0301, Amended 9-25-91, 9-16-92, 6-7-93, 10-3-95, 10-11-01, 12-3-06.

40C-4.302 Additional Conditions for Issuance of Permits

(1) In addition to the conditions set forth in Rule 40C-4.301, F.A.C., in order to obtain a standard, individual, or conceptual approval permit under this chapter or Chapter 40C-40, F.A.C., an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, and abandonment of a system:

(a) 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 subsections 12.2.3 through 12.2.3.7 of the Applicant's Handbook: Management and Storage of Surface Waters:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters as set forth in subsections 12.2.8 through 12.2.8.2 of the Applicant's Handbook: Management and Storage of Surface Waters adopted by reference in Rule 40C-4.091, F.A.C.

(c) 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 of Agriculture and Consumer Services as approved, restricted or conditionally restricted for shellfish harvesting as set forth or incorporated by reference in Chapter 5L-1, F.A.C., (July 29, 2008), will comply with the additional criteria in subsection 12.2.5 of the Applicant's Handbook: Management and Storage of Surface Waters adopted by reference in Rule 40C-4.091, F.A.C.

(d) Which constitute vertical seawalls in estuaries or lagoons, will comply with the additional criteria provided in subsection 12.2.6 of the Applicant's Handbook: Management and Storage of Surface Waters adopted by reference in Rule 40C-4.091, F.A.C.

(2) When determining whether a permit applicant has provided reasonable assurances that Department and District permitting standards will be met, the Department shall take into consideration the applicant's violation of any Department rules adopted pursuant to Sections 403.91 - .929, F.S., (1984 Supp.), as amended, as well as any District rules, which the Department had the responsibility to enforce pursuant to delegation, or any Department 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. The District's delegation to the Department to enforce District rules is set forth in the Operating Agreement concerning Stormwater Discharge Regulation and Dredge and Fill Regulation, dated January 4, 1988; Operating Agreement concerning Management and Storage of Surface Waters Regulation and Wetland Resource Regulation between the St. Johns River Water Management District and Department of Environmental Regulation, dated August 28, 1992; and Operating Agreement Concerning Regulation under Part IV, Chapter 373, F.S., between St. Johns

River Water Management District and Department of Environmental Protection dated August 25, 1994; Operating Agreement Concerning Regulation under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S., between St. Johns River Water Management District and Department of Environmental Protection dated December 3, 1998; and Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., between St. Johns River Water Management District and Department of Environmental Protection dated July 1, 2007, all incorporated by reference in Rule 62-113.200, F.A.C.

Specific Authority 373.044, 373.046, 373.103, 373.113, 373.414, 373.418 FS. Law Implemented 373.016(2), 373.413, 373.414, 373.416, 373.418, 373.426 FS. History--New 10-3-95, Amended 10-11-01, 7-1-07.

40C-4.381 Limiting Conditions.

(1) The following general conditions shall be a part of all permits issued pursuant to this chapter and Chapter 40C-40, F.A.C., unless 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 Department 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 are 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 as soon as practicable.

(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 7 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 Department a fully executed "Construction Commencement Notice" Form 62-343.900(3) 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 Department on an annual basis utilizing an Annual Status Report Form 62-343.900(4). These forms shall be submitted during June of each year.

(h) For those systems which will be operated or maintained by an entity which will require 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 subsections 7.1.1 through 7.1.4 of the Applicant's Handbook: Management and Storage of Surface Waters, must be submitted to the Department for approval. Documents meeting the requirements set forth in these subsections of the Applicant's Handbook will be approved. Deed restrictions, easements and other operation and maintenance documents which require recordation either with the Secretary of State or the 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 Department 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 As Built Certification Form 62-343.900(5) supplied with this permit. 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 Department. Submittal of the completed form shall serve to notify the Department 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" or "record" 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 Department determines the system to be in compliance with the permitted plans, and the entity approved by the Department in accordance with subsections 7.1.1 through 7.1.4 of the Applicant's Handbook: Management and Storage of Surface Waters, accepts responsibility for operation and maintenance of the system. The permit may not be transferred to such an approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the Department, the permittee shall request transfer of the permit to the responsible approved operation and maintenance entity, if different from the permittee. Until the permit is transferred pursuant to section 7.1 of the Applicant's Handbook: Management and Storage of Surface Waters, 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 Department 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 Chapter 40C-4 or 40C-40, F.A.C.

(n) The permittee shall hold and save the Department 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.

(o) 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 Rule 62-343.040, F.A.C., provides otherwise.

(p) The permittee shall notify the Department 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 Rule 62-343.130, 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.

(q) Upon reasonable notice to the permittee, Department 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.

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

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

(2) In addition to those general conditions set forth in subsection (1), the Department shall impose on any permit granted under this chapter and Chapter 40C-40, 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 as set forth in District and Department rules. Upon receipt of the notice of intended Department action, any person whose substantial interests are affected shall have the right to request a hearing in accordance with Chapter 28-106 and Rule 62-110.106, F.A.C.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.409, 373.413, 373.416, 373.419, 373.422, 373.423, 373.426 FS. History--New 12-7-83, Formerly 40C-4.381, 40C-4.0381. Amended 8-1-89, 10-19-89, 3-14-90, 2-27-94, 10-3-95, 1-4-96, 1-11-99, 11-11-03.

40C-4.751 Enforcement.

A system which is constructed or altered without a permit and which requires a permit and the permit, when applied for after the initiation of construction, is denied, must be restored to its pre-construction condition.

Specific Authority 373.119, 373.113 FS. Law Implemented 373.113, 373.119, 373.113, 373.136, 373.603, 373.613 FS. History--New 2-3-81, Amended 12-7-83, Formerly 40C-4.751, 40C-4.0751, Amended 11-11-03.