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States' Wetlands Permitting Statutes:

Florida

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FL Stat. §§ 373.403-373.407; 373.413-373.4131; 373.4134-373.41365; 373.414-373.4141; 373.4143; 373.4145; 373.416-373.418; 373.419-373.441; 373.443
FL Stat. § 403.811

Current with laws, joint and concurrent resolutions and memorials through April 15, 2024, in effect from the 2024 first regular session.

FL Stat § 373.403. Definitions.

Definitions.—When appearing in this part or in any rule, regulation, or order adopted pursuant thereto, the following terms mean:

(1) "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.

(2) "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.

(3) "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.

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

(5) "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.

(6) "Closed system" means any reservoir or works located entirely within agricultural lands owned or controlled by the user and which requires water only for the filling, replenishing, and maintaining the water level thereof.

(7) "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.

(8) "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.

(9) "Drainage basin" means a subdivision of a watershed.

(10) "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.

(11) "State water quality standards" means water quality standards adopted pursuant to chapter 403.

(12) "Watershed" means the land area which contributes to the flow of water into a receiving body of water.

(13) "Dredging" means excavation, by any means, in surface waters or wetlands, as delineated in s. 373.421(1). 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 s. 373.421(1), directly or via an excavated water body or series of water bodies.

(14) "Filling" means the deposition, by any means, of materials in surface waters or wetlands, as delineated in s. 373.421(1).

(15) "Estuary" means a semienclosed, 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.

(16) "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.

(17) "Seawall" means a manmade wall or encroachment, except riprap, which is made to break the force of waves and to protect the shore from erosion.

(18) "Ecological value" means the value of functions performed by uplands, wetlands, and other surface waters to the abundance, diversity, and habitats of fish, wildlife, and listed species. These functions include,

but are not limited to, providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhances fish, wildlife, and listed species utilization.

(19) "Mitigation bank" means a project permitted under s. 373.4136 undertaken to provide for the withdrawal of mitigation credits to offset adverse impacts authorized by a permit under this part.

(20) "Mitigation credit" means a standard unit of measure which represents the increase in ecological value resulting from restoration, enhancement, preservation, or creation activities.

(21) "Mitigation service area" means the geographic area within which mitigation credits from a mitigation bank may be used to offset adverse impacts of activities regulated under this part.

(22) "Offsite regional mitigation" means mitigation on an area of land off the site of an activity permitted under this part, where an applicant proposes to mitigate the adverse impacts of only the applicant's specific activity as a requirement of the permit, which provides regional ecological value, and which is not a mitigation bank permitted under s. 373.4136.

FL Stat § 373.406. Exemptions. – The following exemptions shall apply:

(1) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any natural person to capture, discharge, and use water for purposes permitted by law.

(2) Notwithstanding s. 403.927, nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area. However, such alteration or activity may not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. This exemption applies to lands classified as agricultural pursuant to s. 193.461 and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any activities previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to this part or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984.

(3) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to be applicable to construction, operation, or maintenance of any agricultural closed system. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such agricultural closed system. This subsection shall not be construed to eliminate the necessity to meet generally accepted engineering practices for construction, operation, and maintenance of dams, dikes, or levees.

(4) All rights and restrictions set forth in this section shall be enforced by the governing board or the Department of Environmental Protection or its successor agency, and nothing contained herein shall be construed to establish a basis for a cause of action for private litigants.

(5) The department or the governing board may by rule establish general permits for stormwater management systems which have, either singularly or cumulatively, minimal environmental impact. The department or the governing board also may establish by rule exemptions or general permits that implement interagency agreements entered into pursuant to s. 373.046, s. 378.202, s. 378.205, or s. 378.402.

(6) Any district or the department may exempt from regulation under this part those activities that the district or department determines will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district. The district and the department are authorized to determine, on a case-by-case basis, whether a specific activity comes within this exemption. Requests to qualify for this exemption shall be submitted in writing to the district or department, and such activities shall not be commenced without a written determination from the district or department confirming that the activity qualifies for the exemption.

(7) Nothing in this part, or in any rule or order adopted under this part, may be construed to require a permit for mining activities for which an operator receives a life-of-the-mine permit under s. 378.901.

(8) Certified aquaculture activities which apply appropriate best management practices adopted pursuant to s. 597.004 are exempt from this part.

(9) Implementation of measures having the primary purpose of environmental restoration or water quality improvement on agricultural lands are exempt from regulation under this part where these measures or practices are determined by the district or department, on a case-by-case basis, to have minimal or insignificant individual and cumulative adverse impact on the water resources of the state. The district or department shall provide

written notification as to whether the proposed activity qualifies for the exemption within 30 days after receipt of a written notice requesting the exemption. No activity under this exemption shall commence until the district or department has provided written notice that the activity qualifies for the exemption.

(10) Implementation of interim measures or best management practices adopted pursuant to s. 403.067 that are by rule designated as having minimal individual or cumulative adverse impacts to the water resources of the state are exempt from regulation under this part.

(11) Any district or the department may adopt rules to exempt from regulation under this part any system for a mining or mining-related activity that is described in or covered by an exemption confirmation letter issued by the district pursuant to applicable rules implementing this part that were in effect at the time the letter was issued, and that will not be harmful to the water resources. Such rules may include provisions for the duration of this exemption.

(12) An overwater pier, dock, or a similar structure located in a deepwater port listed in s. 311.09 is not considered to be part of a stormwater management system for which this chapter or chapter 403 requires stormwater from impervious surfaces to be treated if:

> (a) The port has a stormwater pollution prevention plan for industrial activities pursuant to the National Pollutant Discharge Elimination System Program; and
>
> (b) The stormwater pollution prevention plan also provides similar pollution prevention measures for other activities that are not subject to the National Pollutant Discharge Elimination System Program and that occur on the port's overwater piers, docks, and similar structures.

(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to construction, alteration, operation, or maintenance of any wholly owned, manmade excavated farm ponds, as defined in s. 403.927, constructed entirely in uplands. Alteration or maintenance may not involve any work to connect the farm pond to, or expand the farm pond into, other wetlands or other surface waters. This exemption does not apply to any farm pond that covers an area greater than 15 acres and has an average depth greater than 15 feet, or is less than 50 feet from any wetlands.

(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with

the natural flow of surface water caused by an unaffiliated adjoining landowner. Requests to qualify for this exemption must be made within 7 years after the cause of such unauthorized flooding or unauthorized interference with the natural flow of surface water and must be submitted in writing to the district or department. Such activities may not begin without a written determination from the district or department confirming that the activity qualifies for the exemption. This exemption does not expand the jurisdiction of the department or the water management districts and does not apply to activities that discharge dredged or fill material into waters of the United States, including wetlands, subject to federal jurisdiction under s. 404 of the federal Clean Water Act, 33 U.S.C. s. 1344.

FL Stat § 373.407. Determination of qualification for an agricultural-related exemption.

In the event of a dispute as to the applicability of an exemption, a water management district or landowner may request the Department of Agriculture and Consumer Services to make a binding determination as to whether an existing or proposed activity qualifies for an agricultural-related exemption under s. 373.406(2). The Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement or amend an existing memorandum of agreement which sets forth processes and procedures by which the Department of Agriculture and Consumer Services shall undertake its review, make a determination effectively and efficiently, and provide notice of its determination to the applicable water management district or landowner. The Department of Agriculture and Consumer Services has exclusive authority to make the determination under this section and may adopt rules to implement this section and s. 373.406(2).

FL Stat § 373.413. Permits for construction or alteration.

(1) Except for the exemptions set forth herein, the governing board or the department may require such permits and impose such reasonable conditions as are necessary to assure that the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto and will not be harmful to the water resources of the district. The department or the governing board may delineate areas within the district wherein permits may be required.

(2) A person proposing to construct or alter a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board or department for a permit authorizing such construction or alteration. The application shall contain the following:

(a) Name and address of the applicant.

(b) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land.

(c) Location of the work.

(d) Sketches of construction pending tentative approval.

(e) Name and address of the person who prepared the plans and specifications of construction.

(f) Name and address of the person who will construct the proposed work.

(g) General purpose of the proposed work.

(h) Such other information as the governing board or department may require.

(3) After receipt of an application for a permit, the governing board or department shall publish notice of the application by sending a notice to any persons who have filed a written request for notification of any pending applications affecting the particular designated area. Such notice may be sent by regular mail. The notice shall contain the name and address of the applicant; a brief description of the proposed activity, including any mitigation; the location of the proposed activity, including whether it is located within an Outstanding Florida Water or aquatic preserve; a map identifying the location of the proposed activity subject to the application; a depiction of the proposed activity subject to the application; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule.

(4) In addition to the notice required by subsection (3), the governing board or department may publish, or require an applicant to publish at the applicant's expense, in a newspaper of general circulation within the affected area, a notice of receipt of the application and a notice of intended agency action. This subsection does not limit the discretionary authority of the department or the governing board of a water management district to publish, or to require an applicant to publish at the applicant's expense, any notice under this chapter. The governing board or department shall also provide notice of this intended agency action to the applicant and to persons who have requested a copy of the intended agency action for that specific application.

(5) The governing board or department may charge a subscription fee to any person who has filed a written request for notification of any pending applications to cover the cost of duplication and mailing charges.

(6) It is the intent of the Legislature that the governing board or department exercise flexibility in the permitting of stormwater management systems associated with the construction or alteration of systems serving state transportation projects and facilities. Because of the unique limitations of linear facilities, the governing board or department shall balance the expenditure of public funds for stormwater treatment for state transportation projects and facilities with the benefits to the public in providing the most cost-efficient and effective method of achieving the treatment objectives. In consideration thereof, the governing board or department shall allow alternatives to onsite treatment, including, but not limited to, regional stormwater treatment systems. The Department of Transportation is responsible for treating stormwater generated from state transportation projects but is not responsible for the abatement of pollutants and flows entering its stormwater management systems from offsite sources; however, this subsection does not prohibit the Department of Transportation from receiving and managing such pollutants and flows when cost effective and prudent. Further, in association with right-of-way acquisition for state transportation projects, the Department of Transportation is responsible for providing stormwater treatment and attenuation for the acquired right-of-way but is not responsible for modifying permits for adjacent lands affected by right-of-way acquisition when it is not the permittee. The governing board or department may establish, by rule, specific criteria to implement the management and treatment alternatives and activities under this subsection.

FL Stat § 373.4131. Statewide environmental resource permitting rules.

(1) The department shall initiate rulemaking to adopt, in coordination with the water management districts, statewide environmental resource permitting rules governing the construction, alteration, operation, maintenance, repair, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof, under this part.

(a) The rules must provide for statewide, consistent regulation of activities under this part and must include, at a minimum:

1. Criteria and thresholds for requiring permits.
2. Types of permits.

3. Procedures governing the review of applications and notices, duration and modification of permits, operational requirements, transfers of permits, provisions for emergencies, and provisions for abandonment and removal of systems.

4. Exemptions and general permits that do not allow significant adverse impacts to occur individually or cumulatively.

5. Conditions for issuance.

6. General permit conditions, including monitoring, inspection, and reporting requirements.

7. Standardized fee categories for activities under this part to promote consistency. The department and water management districts may amend fee rules to reflect the standardized fee categories but are not required to adopt identical fees for those categories.

8. Application, notice, and reporting forms. To the maximum extent practicable, the department and water management districts shall provide for electronic submittal of forms and notices.

9. An applicant's handbook that, at a minimum, contains general program information, application and review procedures, a specific discussion of how environmental criteria are evaluated, and discussion of stormwater quality and quantity criteria.

(b) The rules must provide for a conceptual permit for a municipality or county that creates a stormwater management master plan for urban infill and redevelopment areas or community redevelopment areas created under chapter 163. Upon approval by the department or water management district, the master plan shall become part of the conceptual permit issued by the department or water management district. The rules must additionally provide for an associated general permit for the construction and operation of urban redevelopment projects that meet the criteria established in the conceptual permit. The following requirements must also be met:

1. The conceptual permit and associated general permit must not conflict with the requirements of a federally approved program pursuant to s. 403.0885 or with the implementation of s. 403.067(7) regarding total maximum daily loads and basin management action plans.

2. Before a conceptual permit is granted, the municipality or county must assert that stormwater discharges from the urban redevelopment area do not cause or contribute to violations of water quality standards by demonstrating a net improvement in the quality of the discharged water existing on the date the conceptual permit is approved.

3. The conceptual permit may not expire for at least 20 years unless a shorter duration is requested and must include an option to renew.

4. The conceptual permit must describe the rate and volume of stormwater discharges from the urban redevelopment area, including the maximum rate and volume of stormwater discharges as of the date the conceptual permit is approved.

5. The conceptual permit must contain provisions regarding the use of stormwater best management practices and must ensure that stormwater management systems constructed within the urban redevelopment area are operated and maintained in compliance with s. 373.416.

(c) The rules must rely primarily on the rules of the department and water management districts in effect immediately prior to the effective date of this section, except that the department may:

1. Reconcile differences and conflicts to achieve a consistent statewide approach.

2. Account for different physical or natural characteristics, including special basin considerations, of individual water management districts.

3. Implement additional permit streamlining measures.

(d) The application of the rules must continue to be governed by the first sentence of s. 70.001(12).

(2)

(a) Upon adoption of the rules, the water management districts shall implement the rules without the need for further rulemaking pursuant to s. 120.54. The rules adopted by the department pursuant to this section shall also be considered the rules of the water management districts. The districts and local governments shall have substantive jurisdiction to implement and interpret rules adopted by the

department under this part, consistent with any guidance from the department, in any license or final order pursuant to s. 120.60 or s. 120.57(1)(l).

(b)

1. A county, municipality, or local pollution control program that has a delegation of the environmental resource permit program authority or proposes to be delegated such authority under s. 373.441 shall without modification incorporate by reference the rules adopted pursuant to this section.

2. A county, municipality, or local pollution control program that has a delegation of the environmental resource permit program authority under s. 373.441 must amend its local ordinances or regulations to incorporate by reference the applicable rules adopted pursuant to this section within 12 months after the effective date of the rules.

3. Consistent with s. 373.441, this section does not prohibit a county, municipality, or local pollution control program from adopting or implementing regulations that are stricter than those adopted pursuant to this section.

4. The department and each local program with the authority to implement or seeking to implement a delegation of environmental resource permit program authority under s. 373.441 shall identify and reconcile any duplicative permitting processes as part of the delegation.

(c) Until the rules adopted pursuant to this section become effective, existing rules adopted pursuant to this part remain in full force and effect. Existing rules that are superseded by the rules adopted pursuant to this section may be repealed without further rulemaking pursuant to s. 120.54 by publication of a notice of repeal in the Florida Administrative Register and subsequent filing of a list of the rules repealed with the Department of State.

(3)

(a) The water management districts, with department oversight, may continue to adopt rules governing design and performance standards for stormwater quality and quantity, and the department may incorporate the design and performance standards by reference for use within the geographic jurisdiction of each district.

(b) If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the department or a water management district under this part, the system design is presumed not to cause or contribute to violations of applicable state water quality standards.

(c) If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption under this part, the stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.

(4) Notwithstanding the adoption of rules pursuant to this section, the following activities shall continue to be governed by the rules adopted by the department, the water management districts, and delegated local programs under this part in effect before the effective date of the rules adopted pursuant to this section, unless the applicant elects review in accordance with the rules adopted pursuant to this section:

(a) The operation and maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof legally in existence before the effective date of the rules adopted pursuant to this section if the terms and conditions of the permit, exemption, or other authorization for such activity continue to be met.

(b) The activities determined in writing by the department, a water management district, or a local government delegated local pollution control program authority under s. 373.441 to be exempt from the permitting requirements of this part, including self-certifications submitted to the department, a water management district, or a delegated local government before the effective date of the rules adopted pursuant to this section.

(c) The activities approved in a permit issued pursuant to this part and the review of activities proposed in a permit application that is complete before the effective date of the rules adopted pursuant to this section. This paragraph applies to any modification of the plans, terms, and conditions of the permit, including new activities, within the geographical area to which the permit applies and to any modification that lessens or does not increase impacts. However, this paragraph does not apply to a modification that is reasonably expected to lead to additional or substantially different impacts.

(5) To ensure consistent implementation and interpretation of the rules adopted pursuant to this section, the department shall conduct or oversee regular assessment and training of its staff and the staffs of the water management districts and local governments delegated local pollution control program authority under s. 373.441. The training must include field inspections of publicly and privately owned stormwater structural controls, such as stormwater retention and detention ponds.

(6) By January 1, 2021:

(a) The department and the water management districts shall initiate rulemaking to update the stormwater design and operation regulations, including updates to the Environmental Resource Permit Applicant's Handbook, using the most recent scientific information available. As part of rule development, the department shall consider and address low-impact design best management practices and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a water body.

(b) The department shall review and evaluate permits and inspection data by those entities that submit a self-certification under s. 403.814(12) for compliance with state water quality standards and provide the Legislature with recommendations for improvements to the self-certification process, including, but not limited to, additional staff resources for department review of portions of the process where high-priority water quality issues justify such action.

FL Stat § 373.4134. Water quality enhancement areas.

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that:

(a) Water quality will be improved and adverse water quality impacts of activities regulated under this part may be addressed by the construction, operation, maintenance, and long-term management of water quality enhancement areas that provide offsite compensatory treatment.

(b) An expansion of existing authority for regional treatment to include offsite compensatory treatment in water quality enhancement areas to make enhancement credits available for purchase by governmental entities to address impacts regulated under this part is needed.

(c) The construction, operation, maintenance, and long-term management of water quality enhancement areas under this section will improve the certainty and long-term viability of water quality treatment systems.

(d) Water quality enhancement areas are a valuable tool to assist governmental entities in satisfying the net improvement performance standard under s. 373.414(1)(b)3. to ensure significant reductions of pollutant loadings.

(e) Water quality enhancement areas that provide water quality enhancement credits to governmental entities seeking permits under this part and governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s. 403.067 are considered an appropriate and permittable option.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Enhancement credit" means a standard unit of measure that represents a quantity of pollutant removed.

(b) "Governmental entity" means any political subdivision of the state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.

(c) "Natural system" means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitats.

(d) "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained for the purpose of providing offsite regional treatment for which enhancement credits may be provided pursuant to a water quality enhancement area permit issued under this section.

(e) "Water quality enhancement area permit" means an environmental resource permit issued for a water quality enhancement area which authorizes the construction, operation, management, and maintenance of an enhancement area and the purchase and sale of enhancement credits.

(3) WATER QUALITY ENHANCEMENT AREAS.—

(a) The construction, operation, management, and maintenance of a water quality enhancement area must be approved through the environmental resource permitting process.

(b) Water quality enhancement credits may be sold only to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan or for the purpose of achieving net improvement under s. 373.414(1)(b)3. after the governmental entity has provided reasonable assurance of meeting department rules for design and construction of all onsite stormwater management.

(c) A water quality enhancement area must be used to address contributions of one or more pollutants or other constituents in the watershed, basin, sub-basin, targeted restoration area, waterbody, or section of waterbody, as determined by the department, in which the water quality enhancement area is located that do not meet applicable state water quality criteria.

(d) A water quality enhancement area must be used to create, improve, or use natural systems to improve water quality.

(e) A governmental entity may use a water quality enhancement area for its own water quality needs. However, a governmental entity may not act as a sponsor to construct, operate, manage, or maintain a water quality enhancement area or market enhancement credits to third parties.

(f) A local government may not require a permit or otherwise impose regulations governing the operation of a water quality enhancement area.

(g) This section does not eliminate the obligation of an applicant for a water quality enhancement area permit or an applicant proposing to use enhancement credits to comply with all requirements of this part pertaining to adverse impacts to water quality in receiving waters and adjacent lands or wetlands.

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will be used to:

1. Meet the requirements for issuance of an environmental resource permit;

2. Benefit water quality in the watershed in which the water quality enhancement area is located;

3. Meet defined performance or success criteria for the reduction of one or more pollutants or other constituents that prevent receiving waters from meeting applicable state water quality criteria;

4. Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to ensure perpetual operation and maintenance;

5. Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of the land within the water quality enhancement area; and

6. Provide for permanent preservation of the water quality enhancement area that meets the requirements of s. 704.06.

(b) The water quality enhancement area permit must provide for the assessment, valuation, and award of credits based on units of pollutants removed.

(c) The department shall base its determination of the award of enhancement credits on standard numerical models or analytical tools that establish the ability of the water quality enhancement area to remove pollutants or constituents.

1. If a basin management action plan exists for the watershed in which the water quality enhancement area is located, the applicant must use the same numerical models or analytical tools used for that basin management action plan in the water quality enhancement area permit application.

2. If a basin management action plan does not exist for the watershed in which the water quality enhancement area is located, the applicant, with the approval of the department, may submit as part of the water quality enhancement area permit application model parameters and results used in a numerical model or an analytical tool used by the department to develop a basin management action plan for a watershed with similar physical characteristics and pollutants as the watershed in

which the proposed water quality enhancement area is to be located.

3. If the department determines that its numerical model or analytical tool used for a basin management action plan is not appropriate for the proposed water quality enhancement area, the applicant must use a standard numerical model or analytical tool for the proposed water quality enhancement area.

4. To assist the department in evaluating and determining enhancement credits, a water quality enhancement area permit application must include the numerical model or analytical tool results used to establish the efficacy of the water quality enhancement area. Supporting information must include, but need not be limited to:

a. Rainfall data over the longest period of record available collected from the closest site to the proposed water quality enhancement area, preferably within the same drainage basin.

b. Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record that most closely matches the rainfall data collected under this paragraph.

c. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

d. Data provided pursuant to sub-subparagraphs a. and b. must be from monitoring stations the department deems sufficient to determine flows and local water quality conditions.

(d) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for construction activities associated with the water quality enhancement area.

(5) WATER QUALITY ENHANCEMENT SERVICE AREA.—The department shall establish a water quality enhancement service area for each water quality enhancement area. Enhancement credits may be withdrawn and used only to address adverse impacts in the enhancement service area. The boundaries of the enhancement service area shall depend upon the geographic area in which the water quality enhancement area could reasonably be expected to address adverse impacts. Enhancement service areas may overlap, and enhancement service areas for two or more water quality enhancement areas may be approved for a regional watershed.

(6) MONITORING AND VERIFICATION.—

(a) An applicant for a water quality enhancement area permit must propose a performance and success criteria monitoring and verification plan, with protocols to be implemented once the water quality enhancement area is operational. The protocols must be appropriate for the water quality enhancement area and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which credits are awarded by the department.

(b) If a permittee fails to comply with the conditions of a water quality enhancement area permit, the department must revoke the ability of the permittee to sell enhancement credits until the water quality enhancement area complies with the permit conditions.

(7) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to governmental entities to address adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet required nonpoint source contribution reductions assigned in a basin management action plan or reasonable assurance plan under s. 403.067.

(b) Before approving the use of enhancement credits, the department or water management district must determine that the enhancement credits used by an applicant seeking a permit under this part are appropriate for a specific permit use.

(c) Water quality improvement projects using natural systems or land use modifications, including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, may be used by an applicant to generate enhancement credits if approved by the department. Water quality enhancement areas

may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.

(d) The department shall provide for and maintain a ledger to track the award, release, and use of enhancement credits.

1. A water management district that authorizes applicants seeking permits under this part to use enhancement credits to address water quality impacts must report to the department the amount of enhancement credits used by the applicants.

2. The operator of a water quality enhancement area shall notify the department of the amount of enhancement credits sold or used within 30 days after the date the enhancement credit transaction is completed.

(e) Reductions in pollutant loading required under any state regulatory program are not eligible to be considered as enhancement credits.

(f) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an environmental resource permit for construction and operation of the surface water management system of the site.

(g) Use of enhancement credits made available by water quality enhancement areas is voluntary.

(h) Any landowner, discharger, or other responsible person regulated under this part or s. 403.067 implementing applicable management strategies specified in an adopted basin management action plan or reasonable assurance plan may not be required by any permit or other enforcement action to use enhancement credits to reduce pollutant loads to achieve the pollutant reductions established pursuant to s. 403.067.

(i) A local government may not deny the use of enhancement credits due to the location of the water quality enhancement area outside the jurisdiction of the local government.

(j) Notwithstanding any other law, this section does not limit or restrict the authority of the department to deny the use of enhancement credits when the department is not reasonably assured that the use of the credits will not cause or contribute to a violation of water quality standards, even if the project being implemented by the governmental entity is within the enhancement service area. The department may allow the use of enhancement credits if the department receives a request for the use of enhancement credits and determines that

such use will not cause or contribute to a violation of water quality standards.

(8) AUTHORITY.—The authority granted to the department under this section is supplemental to the authority granted under s. 403.067(8).

(9) RULES.—The department shall adopt rules to implement this section. This section may not be implemented until the department adopts such rules.

FL Stat § 373.4135. Mitigation banks and offsite regional mitigation.

(1) The Legislature finds that the adverse impacts of activities regulated under this part may be offset by the creation, maintenance, and use of mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation can enhance the certainty of mitigation and provide ecological value due to the improved likelihood of environmental success associated with their proper construction, maintenance, and management. Therefore, the department and the water management districts are directed to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present.

(a) The Legislature intends that the provisions for establishing mitigation banks apply equally to both public and private entities, except that the rules of the department and water management districts may set forth different measures governing financial responsibility, and different measures governing legal interest, needed to ensure the construction and perpetual protection of a mitigation bank.

(b) The Legislature recognizes the importance of mitigation banks as an appropriate and allowable mitigation alternative to permittee-responsible mitigation. However, the Legislature also recognizes that certain timing and geographical constraints could result in the unavailability of mitigation bank credits for a certain project upon completion of the project's application. If state and federal mitigation credits are not available to offset the adverse impacts of a project, a local government may allow permittee-responsible mitigation consisting of the restoration or enhancement of lands purchased and owned by a local government for conservation purposes, and such mitigation must conform to the permitting requirements of s. 373.4136. Except when a local government has allowed a public or private mitigation

project to be created on land it has purchased for conservation purposes pursuant to this paragraph, a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136. This paragraph does not apply to:

1. Mitigation banks permitted before December 31, 2011, under s. 373.4136;

2. Offsite regional mitigation areas established before December 31, 2011, under subsection (6) or, when credits are not available at a mitigation bank permitted under s. 373.4136, mitigation areas created by a local government which were awarded mitigation credits pursuant to the uniform mitigation assessment method as provided in chapter 62-345, Florida Administrative Code, under a permit issued before December 31, 2011;

3. Mitigation for transportation projects under ss. 373.4137 and 373.4139;

4. Mitigation for impacts from mining activities under s. 373.41492;

5. Mitigation provided for single-family lots or homeowners under subsection (7);

6. Entities authorized in chapter 98-492, Laws of Florida;

7. Mitigation provided for electric utility impacts certified under part II of chapter 403; or

8. Mitigation provided on sovereign submerged lands under subsection (6).

(c) It is the further intent of the Legislature that mitigation banks and offsite regional mitigation be considered appropriate and a permittable mitigation option under the conditions specified by the rules of the department and water management districts.

(d) Offsite mitigation, including offsite regional mitigation, may be located outside the regional watershed in which the adverse impacts of an activity regulated under this part are located, if such adverse impacts are offset by the offsite mitigation.

(e) The department or water management district may allow the use of a mitigation bank or offsite regional mitigation alone or in combination with other forms of mitigation to offset adverse impacts of activities regulated under this part.

(f) When an applicant for a permit under the provisions of this part other than this section and s. 373.4136 submits more than one mitigation proposal to the department or a water management district, the department or water management district shall, in evaluating each proposal, ensure that such proposal adequately offsets the adverse impacts.

(2) Local governments shall not deny the use of a mitigation bank or offsite regional mitigation due to its location outside of the jurisdiction of the local government.

(3) Nothing in this section or s. 373.4136 shall be construed to eliminate or diminish any of the regulatory requirements applicable to applicants seeking permits pursuant to other provisions of this part.

(4) Except as otherwise provided herein, nothing in this section or s. 373.4136 shall be construed to diminish or limit the existing authority of the department, water management districts, or local governments.

(5) Nothing in this section or s. 373.4136 shall be construed to limit the consideration of forms of mitigation other than mitigation banks and offsite regional mitigation.

(6) An environmental creation, preservation, enhancement, or restoration project, including regional offsite mitigation areas, for which money is donated or paid as mitigation, that is sponsored by the department, a water management district, or a local government and provides mitigation for five or more applicants for permits under this part, or for 35 or more acres of adverse impacts, shall be established and operated under a memorandum of agreement. The memorandum of agreement shall be between the governmental entity proposing the mitigation project and the department or water management district, as appropriate. Such memorandum of agreement need not be adopted by rule. For the purposes of this subsection, one creation, preservation, enhancement, or restoration project shall mean one or more parcels of land with similar ecological communities that are intended to be created, preserved, enhanced, or restored under a common scheme.

(a) For any ongoing creation, preservation, enhancement, or restoration project and regional offsite mitigation area sponsored by the department, a water management district, or a local

government, for which money was or is paid as mitigation, that was begun prior to the effective date of this subsection and has operated as of the effective date of this subsection, or is anticipated to operate, in excess of the mitigation thresholds provided in this subsection, the governmental entity sponsoring such project shall submit a draft memorandum of agreement to the water management district or department by October 1, 2000. The governmental entity sponsoring such project shall make reasonable efforts to obtain the final signed memorandum of agreement within 1 year after such submittal. The governmental entity sponsoring such project may continue to receive moneys donated or paid toward the project as mitigation, provided the requirements of this paragraph are met.

(b) The memorandum of agreement shall establish criteria that each environmental creation, preservation, enhancement, or restoration project must meet. These criteria must address the elements listed in paragraph (c). The entity sponsoring such project, or category of projects, shall submit documentation or other evidence to the water management district or department that the project meets, or individual projects within a category meet, the specified criteria.

(c) At a minimum, the memorandum of agreement must address the following for each project authorized:

1. A description of the work that will be conducted on the site and a timeline for completion of such work.

2. A timeline for obtaining any required environmental resource permit.

3. The environmental success criteria that the project must achieve.

4. The monitoring and long-term management requirements that must be undertaken for the project.

5. An assessment of the project in accordance with s. 373.4136(4)(a)-(i), until the adoption of the uniform wetland mitigation assessment method pursuant to s. 373.414(18).

6. A designation of the entity responsible for the successful completion of the mitigation work.

7. A definition of the geographic area where the project may be used as mitigation established using the criteria of s. 373.4136(6).

8. Full cost accounting of the project, including annual review and adjustment.

9. Provision and a timetable for the acquisition of any lands necessary for the project.

10. Provision for preservation of the site.

11. Provision for application of all moneys received solely to the project for which they were collected.

12. Provision for termination of the agreement and cessation of use of the project as mitigation if any material contingency of the agreement has failed to occur.

(d) A single memorandum of understanding may authorize more than one environmental creation, preservation, enhancement, or restoration project, or category of projects, as long as the elements listed in paragraph (c) are addressed for each project.

(e) Projects governed by this subsection, except for projects established pursuant to subsection (7), shall be subject to the provisions of s. 373.414(1)(b)1.

(f) The provisions of this subsection shall not apply to mitigation areas established to implement the provisions of s. 373.4137.

(g) The provisions of this subsection shall not apply when the department, water management district, or local government establishes, or contracts with a private entity to establish, a mitigation bank permitted under s. 373.4136. The provisions of this subsection shall not apply to other entities that establish offsite regional mitigation as defined in this section and s. 373.403.

(7) The department, water management districts, and local governments may elect to establish and manage mitigation sites, including regional offsite mitigation areas, or contract with permitted mitigation banks, to provide mitigation options for private single-family lots or homeowners. The department, water management districts, and local governments shall provide a written notice of their election under this subsection by United States mail to those individuals who have requested, in writing, to receive such notice. The use of mitigation options established under this subsection are not subject to the full-cost-accounting provision of s. 373.414(1)(b)1. To use a mitigation option established under this subsection, the applicant for a permit under this part must be a private, single-family lot or homeowner, and the land upon which the adverse impact is located must be intended for use as a

single-family residence by the current owner. The applicant must not be a corporation, partnership, or other business entity. However, the provisions of this subsection shall not apply to other entities that establish offsite regional mitigation as defined in this section and s. 373.403.

FL Stat § 373.4136. Establishment and operation of mitigation banks.

(1) MITIGATION BANK PERMITS.—The department and the water management districts may require permits to authorize the establishment and use of mitigation banks. A mitigation bank permit shall also constitute authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must provide reasonable assurance that:

(a) The proposed mitigation bank will improve ecological conditions of the regional watershed;

(b) The proposed mitigation bank will provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;

(c) The proposed mitigation bank will be effectively managed in perpetuity;

(d) The proposed mitigation bank will not destroy areas with high ecological value;

(e) The proposed mitigation bank will achieve mitigation success;

(f) The proposed mitigation bank will be adjacent to lands that will not adversely affect the perpetual viability of the mitigation bank due to unsuitable land uses or conditions;

(g) Any surface water management system to be constructed, altered, operated, maintained, abandoned, or removed within the mitigation bank will meet the requirements of this part and the rules adopted thereunder;

(h) It has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and

(i) It can meet the financial responsibility requirements prescribed for mitigation banks.

(2) MITIGATION BANK PHASES.—A mitigation bank may be established and operated in phases if each phase independently meets the requirements for the establishment and operation of a mitigation bank. The number of mitigation credits assigned to a phase of a mitigation bank may be less than would be assigned to that phase upon completion of all phases of the mitigation bank. In such case, the department or water management districts shall increase the number of mitigation credits awarded to subsequent phases of the mitigation bank.

(3) ADDITION OF LANDS.—The department or water management district shall authorize the addition of land to a permitted mitigation bank when it is appropriate to do so and the addition of the land results in an increase in the ecological value of the existing mitigation bank. Any such addition shall be accomplished through a modification to the permit which reflects the corresponding increase in the total number of mitigation credits assigned to the bank.

(4) MITIGATION CREDITS.—After evaluating the information submitted by the applicant for a mitigation bank permit and assessing the proposed mitigation bank pursuant to the criteria in this section, the department or water management district shall award a number of mitigation credits to a proposed mitigation bank or phase of such mitigation bank. An entity establishing and operating a mitigation bank may apply to modify the mitigation bank permit to seek the award of additional mitigation credits if the mitigation bank results in an additional increase in ecological value over the value contemplated at the time of the original permit issuance, or the most recent modification thereto involving the number of credits awarded. The number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using a functional assessment methodology. In determining the degree of improvement in ecological value, each of the following factors, at a minimum, shall be evaluated:

(a) The extent to which target hydrologic regimes can be achieved and maintained.

(b) The extent to which management activities promote natural ecological conditions, such as natural fire patterns.

(c) The proximity of the mitigation bank to areas with regionally significant ecological resources or habitats, such as national or state parks, Outstanding National Resource Waters and associated watersheds, Outstanding Florida Waters and associated watersheds, and lands acquired through governmental or

nonprofit land acquisition programs for environmental conservation; and the extent to which the mitigation bank establishes corridors for fish, wildlife, or listed species to those resources or habitats.

(d) The quality and quantity of wetland or upland restoration, enhancement, preservation, or creation.

(e) The ecological and hydrological relationship between wetlands and uplands in the mitigation bank.

(f) The extent to which the mitigation bank provides habitat for fish and wildlife, especially habitat for species listed as threatened, endangered, or of special concern, or provides habitats that are unique for that mitigation service area.

(g) The extent to which the lands that are to be preserved are already protected by existing state, local, or federal regulations or land use restrictions.

(h) The extent to which lands to be preserved would be adversely affected if they were not preserved.

(i) Any special designation or classification of the affected waters and lands.

(5) SCHEDULE FOR CREDIT RELEASE.—After awarding mitigation credits to a mitigation bank, the department or the water management district shall set forth a schedule for the release of those credits in the mitigation bank permit. A mitigation credit that has been released may be sold or used to offset adverse impacts from an activity regulated under this part.

(a) The department or the water management district shall allow a portion of the mitigation credits awarded to a mitigation bank to be released for sale or use prior to meeting all of the performance criteria specified in the mitigation bank permit. The department or the water management district shall allow release of all of a mitigation bank's awarded mitigation credits only after the bank meets the mitigation success criteria specified in the permit.

(b) The number of credits and schedule for release shall be determined by the department or water management district based upon the performance criteria for the mitigation bank and the success criteria for each mitigation activity. The release schedule for a specific mitigation bank or phase thereof shall be related to the actions required to implement the bank, such as site protection, site preparation, earthwork, removal of wastes, planting, removal or control of

nuisance and exotic species, installation of structures, and annual monitoring and management requirements for success. In determining the specific release schedule for a bank, the department or water management district shall consider, at a minimum, the following factors:

1. Whether the mitigation consists solely of preservation or includes other types of mitigation.

2. The length of time anticipated to be required before a determination of success can be achieved.

3. The ecological value to be gained from each action required to implement the bank.

4. The financial expenditure required for each action to implement the bank.

(c) Notwithstanding the provisions of this subsection, no credit shall be released for freshwater wetland creation until the success criteria included in the mitigation bank permit are met.

(d) The withdrawal of mitigation credits from a mitigation bank shall be accomplished as a minor modification of the mitigation bank permit. A processing fee shall not be required by the department or water management district for this minor modification.

(6) MITIGATION SERVICE AREA.—The department or water management district shall establish a mitigation service area for each mitigation bank permit. The department or water management district shall notify and consider comments received on the proposed mitigation service area from each local government within the proposed mitigation service area. Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

(a) In determining the boundaries of the mitigation service area, the department or the water management district shall consider the characteristics, size, and location of the mitigation bank and, at a minimum, the extent to which the mitigation bank:

1. Contributes to a regional integrated ecological network;

2. Will significantly enhance the water quality or restoration of an offsite receiving water body that is designated as an Outstanding Florida Water, a Wild and Scenic River, an aquatic preserve, a water body designated in a plan approved pursuant to the Surface Water Improvement and Management Act, or a nationally designated estuarine preserve;

3. Will provide for the long-term viability of endangered or threatened species or species of special concern;

4. Is consistent with the objectives of a regional management plan adopted or endorsed by the department or water management districts; and

5. Can reasonably be expected to offset specific types of wetland impacts within a specific geographic area. A mitigation bank need not be able to offset all expected impacts within its service area.

(b) The department and water management districts shall use regional watersheds to guide the establishment of mitigation service areas. Drainage basins established pursuant to s. 373.414(8) may be used as regional watersheds when they are established based on the hydrological or ecological characteristics of the basin. A mitigation service area may extend beyond the regional watershed in which the bank is located into all or part of other regional watersheds when the mitigation bank has the ability to offset adverse impacts outside that regional watershed. Similarly, a mitigation service area may be smaller than the regional watershed in which the mitigation bank is located when adverse impacts throughout the regional watershed cannot reasonably be expected to be offset by the mitigation bank because of local ecological or hydrological conditions.

(c) Once a mitigation bank service area has been established by the department or a water management district for a mitigation bank, such service area shall be accepted by all water management districts, local governments, and the department.

(d) If the requirements in s. 373.414(1)(b) and (8) are met, the following projects or activities regulated under this part shall be eligible to use a mitigation bank, regardless of whether they are located within the mitigation service area:

1. Projects with adverse impacts partially located within the mitigation service area.

2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or seaports listed in s. 311.09(1).

3. Projects with total adverse impacts of less than 1 acre in size.

(7) ACCOUNTING.—The department or the water management district shall provide for the accounting of the award, release, and use of mitigation credits from a mitigation bank.

(8) AUTHORITY OF LOCAL GOVERNMENTS.—Local governments may not require permits or otherwise impose regulations governing the operation of a mitigation bank. However, this section shall not be construed to limit the authority of a local government to require an applicant for a mitigation bank to obtain any authorization required by a local ordinance for the construction activities associated with a mitigation bank.

(9) PRIOR APPLICATIONS.—An application for a mitigation bank conceptual approval or mitigation bank permit which is pending with, and determined complete by, the department or a water management district on or before the effective date of this act, or a mitigation bank conceptual approval or mitigation bank permit issued on or before the effective date of this act, shall continue to be subject to the rules adopted pursuant to s. 373.4135 which were in effect on the effective date of this act, unless the applicant or permittee elects to be subject to the rules governing mitigation banks adopted after that date.

(10) MODIFICATION WITH RESPECT TO PRIOR APPLICATIONS.—Any application for a modification of a mitigation bank conceptual approval or mitigation bank permit which was pending with, and determined complete by, the department or water management district on or before the effective date of this act, shall continue to be subject to the rules adopted pursuant to s. 373.4135 in effect on the effective date of this act, unless the permittee elects to be subject to the rules governing mitigation banks adopted after that date. Any modification to a mitigation bank conceptual approval or mitigation bank permit issued on or before the effective date of this act, which is applied for within 20 years of the effective date of this act, and which does not involve the addition of new land that was not previously included in the mitigation bank conceptual approval or mitigation bank permit, shall be subject to the rules adopted pursuant to s. 373.4135 which were in effect before the effective date of this act, unless the permittee elects to be subject to the rules governing mitigation banks adopted after that date.

(11) RULES.—The department and water management district may adopt rules to implement the provisions of s. 373.4135 and this section, which shall include, but not be limited to, provisions:

(a) Requiring financial responsibility for the construction, operation, and long-term management of a mitigation bank;

(b) For the perpetual protection and management of mitigation banks; and

(c) Establishing a system and methodology for the valuation, assessment, and award of mitigation credits.

FL Stat § 373.41365. Adoption and modification of rules to ensure financial assurances for long-term management of mitigation under ss. 373.4136 and 373.414.

The Department of Environmental Protection shall adopt and modify rules adopted pursuant to ss. 373.4136 and 373.414 to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation permitted under ss. 373.4136 and 373.414. The department, in consultation with the water management districts, shall include the rulemaking required by this section in existing active rulemaking, or shall complete rule development by June 30, 2023.

FL Stat § 373.414. Additional criteria for activities in surface waters and wetlands.

(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031 will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.

(a) In determining whether an activity, which is in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria:

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 s. 267.061; and

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

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or the department, in deciding to grant or deny a permit, must consider measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. 373.4136. It is the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity.

1. The department or water management districts may accept the donation of money as mitigation only where the donation is specified for use in a duly noticed environmental creation, preservation, enhancement, or restoration project, endorsed by the department or the governing board of the water management district, which offsets the impacts of the activity permitted under this part. However, this subsection does not apply to projects undertaken pursuant to s. 373.4137 or chapter 378. Where a permit is required under this part to implement any project endorsed by the department or a water management

district, all necessary permits must have been issued prior to the acceptance of any cash donation. After the effective date of this act, when money is donated to either the department or a water management district to offset impacts authorized by a permit under this part, the department or the water management district shall accept only a donation that represents the full cost to the department or water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land acquisition, land restoration or enhancement, perpetual land management, and general overhead consisting of costs such as staff time, building, and vehicles. The department or the water management district may use a multiplier or percentage to add to other direct or indirect costs to estimate general overhead. Mitigation credit for such a donation may be given only to the extent that the donation covers the full cost to the agency of undertaking the project intended to mitigate the adverse impacts. However, nothing herein may be construed to prevent the department or a water management district from accepting a donation representing a portion of a larger project, provided that the donation covers the full cost of that portion and mitigation credit is given only for that portion. The department or water management district may deviate from the full cost requirements of this subparagraph to resolve a proceeding brought pursuant to chapter 70 or a claim for inverse condemnation. Nothing in this section may be construed to require the owner of a private mitigation bank, permitted under s. 373.4136, to include the full cost of a mitigation credit in the price of the credit to a purchaser of said credit.

2. The department and each water management district shall report by March 1 of each year, as part of the consolidated annual report required by s. 373.036(7), all cash donations accepted under subparagraph 1. during the preceding water management district fiscal year for wetland mitigation purposes. The report must exclude those contributions pursuant to s. 373.4137. The report must include a description of the endorsed mitigation projects and, except for projects governed by s. 373.4135(6), must address, as applicable, success criteria, project implementation status and timeframe, monitoring, long-term management, provisions for preservation, and full cost accounting.

3. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department must consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

4. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts are controlled by the permit issued under this part.

(c) Where activities for a single project regulated under this part occur in more than one local government jurisdiction, and where permit conditions or regulatory requirements are imposed by a local government for these activities which cannot be reconciled with those imposed by a permit under this part for the same activities, the permit conditions or regulatory requirements are controlled by the permit issued under this part.

(2) The governing board or the department is authorized to establish by rule specific permitting criteria in addition to the other criteria in this part which provides:

(a) One or more size thresholds of isolated wetlands below which impacts on fish and wildlife and their habitats will not be considered. These thresholds shall be based on biological and hydrological evidence that shows the fish and wildlife values of such areas to be minimal.

(b) Criteria for the protection of threatened and endangered species in isolated wetlands regardless of size and land use.

(3) It is the intent of the Legislature to provide for the use of certain wetlands as a natural means of stormwater management and to incorporate these waters into comprehensive stormwater management when such use is compatible with the ecological characteristics of such waters and with sound resource management. To accomplish this, the governing board or the department is authorized to establish by rule performance standards for the issuance of permits for the use of certain wetlands for stormwater management. The

compliance with such standards creates a presumption that the discharge from the stormwater management system meets state water quality standards.

(4) It is the intent of the Legislature to provide for the use of certain wetlands to receive and treat domestic wastewater that at a minimum has been treated to secondary standards. The department may by rule establish criteria for this activity, which criteria protect the type, nature, and function of the wetlands receiving the wastewater.

(5)

(a) It is the intent of the Legislature to protect estuaries and lagoons from the damage created by construction of vertical seawalls and to encourage construction of environmentally desirable shore protection systems, such as riprap and gently sloping shorelines which are planted with suitable aquatic and wetland vegetation.

(b) No permit under this part to create a vertical seawall may be issued by the governing board or the department unless one of the following conditions exists:

1. The proposed construction is located within a port as defined in s. 315.02 or s. 403.021;

2. The proposed construction is necessary for the creation of a marina, the vertical seawalls are necessary to provide access to watercraft, or the proposed construction is necessary for public facilities;

3. The proposed construction is located within an existing manmade canal and the shoreline of such canal is currently occupied in whole or in part by vertical seawalls; or

4. The proposed construction is to be conducted by a public utility when such utility is acting in the performance of its obligation to provide service to the public.

(c) When considering an application for a permit to repair or replace an existing vertical seawall, the governing board or the department shall generally require such seawall to be faced with riprap material, or to be replaced entirely with riprap material unless a condition specified in paragraph (b) exists.

(d) This subsection shall in no way hinder any activity previously exempt or permitted or those activities permitted pursuant to chapter 161.

(6)

(a) The Legislature recognizes that some mining activities that may occur in waters of the state must leave a deep pit as part of the reclamation. Such deep pits may not meet the established water quality standard for dissolved oxygen below the surficial layers. Where such mining activities otherwise meet the permitting criteria contained in this section, such activities may be eligible for a variance from the established water quality standard for dissolved oxygen within the lower layers of the reclaimed pit.

(b) Wetlands reclamation activities for phosphate and heavy minerals mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this part if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities.

(c) Wetlands reclamation activities for fuller's earth mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this part if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities, unless the site features make such reclamation impracticable, in which case the reclamation must offset the regulated activities' adverse impacts on surface waters and wetlands.

(d) Onsite reclamation of the mine pit for limerock and sand mining shall be conducted in accordance with the requirements of chapter 378.

1. Mitigation activities for limerock and sand mining must offset the regulated activities' adverse impacts on surface waters and wetlands. Mitigation activities shall be located on site, unless onsite mitigation activities are not feasible, in which case, offsite mitigation as close to the activities as possible shall be required. However, mitigation banking may be an acceptable form of mitigation, whether on or off site, as judged on a case-by-case basis.

2. The ratio of mitigation-to-wetlands loss shall be determined on a case-by-case basis and shall be based on the quality of the wetland to be impacted and the type of mitigation proposed.

(e) The Legislature recognizes that the state's horticultural industry contributes to the economic strength of Florida and that high-quality peat is a limited resource that is an important component of horticultural production. The Legislature further recognizes that

obtaining high-quality peat typically and uniquely requires the mining of wetlands and other surface waters and that the use of recycled and renewable material to replace or reduce the use of natural peat is necessary for the future of the horticultural industry.

1. As used in this paragraph, the term:

a. "High-quality peat" means peat from a freshwater herbaceous wetland that grades H1 to H4 on the von Post Humification Scale and has a pH less than 7.

b. "Horticultural industry" means the industry that cultivates plants, including, but not limited to, trees, shrubs, flowers, annuals, perennials, tropical foliage, liners, ferns, vines, bulbs, grafts, scions, or buds, but excludes turf grasses grown or kept for or capable of propagation or distribution for retail, wholesale, or rewholesale purposes.

2. The department shall develop rules for permitting and mitigation of peat mines in herbaceous or historically herbaceous wetlands where high-quality peat is extracted predominately for use in the horticultural industry provided:

a. The permitting and mitigation rules shall be applicable where no less than 80 percent of the extracted peat is high-quality peat and 80 percent of the high-quality peat is used by the horticultural industry in products that incorporate other renewable or recycled materials to replace or reduce the use of natural peat;

b. No extraction is occurring in the underlying sand or rock strata;

c. No portion of the extraction or mitigation area is part of an existing or proposed larger plan of development; and

d. No portion of the mine is located in a body of water designated as Outstanding Florida Waters.

3. In adopting rules as directed in subparagraph 2., design modifications shall not be required to reduce or eliminate adverse impacts to herbaceous wetlands that score below a specific value, as provided by rule using the uniform mitigation assessment method of evaluation, except to require that the project meet water quality standards, not cause adverse offsite flooding,

not adversely impact significant historical and archaeological resources pursuant to s. 267.061, and not cause adverse impacts to listed species or their habitats. In assessing mitigation for mines that are not required to reduce or eliminate adverse impacts, retaining a percentage of the reclaimed wetland as open water shall be deemed appropriate wetland mitigation. The rules must establish the amount of open water allowable as mitigation based upon a consideration of the type and amount of other wetland mitigation proposed, the value of those wetlands as evaluated using the uniform mitigation assessment method, and the amount of preservation of wetlands. The amount of open water shall not exceed 60 percent of the premining wetlands within the extracted area.

4. Rule 62-345.600, Florida Administrative Code, shall not be applied to mitigation for mines qualifying under this paragraph.

5. The department shall initiate rulemaking within 90 days after July 1, 2007, and water management districts may implement the proposed rules without adoption pursuant to s. 120.54.

(7) This section shall not be construed to diminish the jurisdiction or authority granted prior to the effective date of this act to the water management districts or the department pursuant to this part, including their jurisdiction and authority over isolated wetlands. The provisions of this section shall be deemed supplemental to the existing jurisdiction and authority under this part.

(8)

(a) The governing board or the department, in deciding whether to grant or deny a permit for an activity regulated under this part shall consider the cumulative impacts upon surface water and wetlands, as delineated in s. 373.421(1), within the same drainage basin as defined in s. 373.403(9), of:

1. The activity for which the permit is sought.

2. Projects which are existing or activities regulated under this part which are under construction or projects for which permits or determinations pursuant to s. 373.421 or [1]s. 403.914 have been sought.

3. Activities which are under review, approved, or vested pursuant to s. 380.06, or other activities regulated under

this part which may reasonably be expected to be located within surface waters or wetlands, as delineated in s. 373.421(1), in the same drainage basin as defined in s. 373.403(9), based upon the comprehensive plans, adopted pursuant to chapter 163, of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations.

(b) If an applicant proposes mitigation within the same drainage basin as the adverse impacts to be mitigated, and if the mitigation offsets these adverse impacts, the governing board and department shall consider the regulated activity to meet the cumulative impact requirements of paragraph (a). However, this paragraph may not be construed to prohibit mitigation outside the drainage basin which offsets the adverse impacts within the drainage basin.

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(30) and may include the special criteria adopted pursuant to s. 403.061(35). Such rules shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such rules may require submission of proof of financial responsibility which may include the posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any activity permitted pursuant to this section, including any mitigation for such permitted activity, will be completed in accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of [2]ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

(10) The department in consultation with the water management districts by rule shall establish water quality criteria for wetlands, which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

(11)

(a) In addition to the statutory exemptions applicable to this part, dredging and filling permitted under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or exempted from regulation under such rules, shall be exempt from the rules adopted pursuant to subsection (9) if the dredging and filling activity did not require a permit under rules adopted pursuant to this part prior to the effective date of the rules adopted pursuant to subsection (9). The exemption from the rules adopted pursuant to subsection (9) shall extend to:

1. The activities approved by said chapter 403 permit for the term of the permit; or

2. Dredging and filling exempted from regulation under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, which is commenced prior to the effective date of the rules adopted pursuant to subsection (9), is completed within 5 years after the effective date of such rules, and regarding which, at all times during construction, the terms of the dredge and fill exemption continue to be met.

(b) This exemption shall also apply to any modification of such permit which does not constitute a substantial modification. For the purposes of this paragraph, a substantial modification is one which is reasonably expected to lead to substantially different environmental impacts. This exemption shall also apply to a modification which lessens the environmental impact. A modification qualifying for this exemption shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in existence prior to the effective date of the rules adopted under subsection (9).

(12)

(a) Activities approved in a conceptual, general, or individual permit issued pursuant to rules adopted pursuant to this part and which were either permitted under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as

amended, or exempt from regulation under such rules, all prior to the effective date of rules adopted pursuant to subsection (9), shall be exempt from the rules adopted pursuant to subsection (9). This exemption shall be for the plans, terms, and conditions approved in the permit issued under rules adopted pursuant to this part or in any permit issued under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and shall be valid for the term of such permits. This exemption shall also apply to any modification of the plans, terms, and conditions of the permit, including new activities, within the geographical area to which the permit issued under rules adopted pursuant to this part applies; however, this exemption shall not apply to a modification that would extend the permitted time limit for construction beyond 2 additional years, or to any modification which is reasonably expected to lead to substantially different water resource impacts. This exemption shall also apply to any modification which lessens the impact to water resources. A modification of the permit qualifying for this exemption shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, as applicable, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such modifications reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

(b) Surface water and wetland delineations identified and approved by the permit issued under rules adopted pursuant to this part prior to the effective date of rules adopted pursuant to subsection (9) shall remain valid until expiration of such permit, notwithstanding the methodology ratified in s. 373.4211. For purposes of this section, the term "identified and approved" means:

1. The delineation was field-verified by the permitting agency and such verification was surveyed as part of the application review process for the permit; or

2. The delineation was field-verified by the permitting agency and approved by the permit.

Where surface water and wetland delineations were not identified and approved by the permit issued under rules adopted pursuant to this part, delineations within the geographical area to which such permit applies shall be determined pursuant to the rules applicable at the time the permit was issued, notwithstanding the methodology ratified in s.

373.4211. This paragraph shall also apply to any modification of the permit issued under rules adopted pursuant to this part within the geographical area to which the permit applies.

(c) Within the boundaries of a jurisdictional declaratory statement issued under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, in which activities have been permitted as described in paragraph (a), the delineation of the landward extent of waters of the state for the purposes of regulation under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, as such rules existed prior to the effective date of the rules adopted pursuant to subsection (9), shall remain valid for the duration of the permit issued pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and shall be used in the review of any modification of such permit.

(13) Any declaratory statement issued by the department under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by a water management district under s. 373.421, in response to a petition filed on or before June 1, 1994, shall continue to be valid for the duration of such declaratory statement. Any such petition pending on June 1, 1994, shall be exempt from the methodology ratified in s. 373.4211, but the rules of the department or the relevant water management district, as applicable, in effect prior to the effective date of s. 373.4211, shall apply. Until May 1, 1998, activities within the boundaries of an area subject to a petition pending on June 1, 1994, and prior to final agency action on such petition, shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9). In the event that a jurisdictional declaratory statement pursuant to the vegetative index in effect prior to the effective date of chapter 84-79, Laws of Florida, has been obtained and is valid prior to the effective date of the rules adopted under subsection (9) or July 1, 1994, whichever is later, and the affected lands are part of a project for which a master development order has been issued pursuant to s. 380.06(9), the declaratory statement shall remain valid for the duration of the buildout period of the project. Any jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, shall remain in effect for a period of 5 years following the effective date of this act if proof of such validation is submitted to the department prior to

January 1, 1995. In the event that a jurisdictional determination has been revalidated by the department pursuant to this subsection and the affected lands are part of a project for which a development order has been issued pursuant to s. 380.06(4), a final development order to which s. 163.3167(5) applies has been issued, or a vested rights determination has been issued pursuant to s. 380.06(8), the jurisdictional determination shall remain valid until the completion of the project, provided proof of such validation and documentation establishing that the project meets the requirements of this sentence are submitted to the department prior to January 1, 1995. Activities proposed within the boundaries of a valid declaratory statement issued pursuant to a petition submitted to either the department or the relevant water management district on or before June 1, 1994, or a revalidated jurisdictional determination, prior to its expiration shall continue thereafter to be exempt from the methodology ratified in s. 373.4211 and to be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

(14) An application under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or this part for dredging and filling or other activity, which is pending on June 15, 1994, or which is submitted and complete prior to the effective date of rules adopted pursuant to subsection (9) shall be:

(a) Acted upon by the agency which is responsible for review of the application under the operating agreement adopted pursuant to s. 373.046(4);

(b) Reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted pursuant to subsection (9), unless the applicant elects to have such activities reviewed under the rules of this part, as amended in accordance with subsection (9); and

(c) Exempt from the methodology ratified in s. 373.4211, but the rules of the department and water management districts to delineate surface waters and wetlands in effect prior to the effective date of s. 373.4211 shall apply, unless the applicant elects to have such ratified methodology apply.

(15) Activities associated with mining operations as defined by and subject to ss. 378.201-378.212 and 378.701-378.703 and included in a conceptual reclamation plan or modification application submitted prior to July 1, 1996, shall continue to be reviewed under the rules of the department adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, the rules of the water management districts under this part, and interagency agreements, in effect on January 1, 1993. Such activities shall be exempt from rules adopted pursuant to subsection (9) and the statewide methodology ratified pursuant to s. 373.4211. As of January 1, 1994, such activities may be issued permits authorizing construction for the life of the mine. Lands added to a conceptual reclamation plan subject to this subsection through a modification submitted after July 1, 1996, which are contiguous to the conceptual reclamation plan area shall be exempt from rules adopted under subsection (9), except that the total acreage of the conceptual reclamation plan may not be increased through such modification and the cumulative acreage added may not exceed 3 percent of the conceptual reclamation plan area. Lands that have been mined or disturbed by mining activities, lands subject to a conservation easement under which the grantee is a state or federal regulatory agency, and lands otherwise preserved as part of a permitting review may not be removed from the conceptual reclamation land area under this subsection.

(16) Until October 1, 2000, regulation under rules adopted pursuant to this part of any sand, limerock, or limestone mining activity which is located in Township 52 South, Range 39 East, sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36; in Township 52 South, Range 40 East, sections 6, 7, 8, 18, and 19; in Township 53 South, Range 39 East, sections 1, 2, 13, 21, 22, 23, 24, 25, 26, 33, 34, 35, and 36; and in Township 54 South, Range 38 East, sections 24, and 25, and 36, shall not include the rules adopted pursuant to subsection (9). In addition, until October 1, 2000, such activities shall continue to be regulated under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, as such rules existed prior to the effective date of the rules adopted pursuant to subsection (9) and such dredge and fill jurisdiction shall be that which existed prior to January 24, 1984. In addition, any such sand, limerock, or limestone mining activity shall be approved by Miami-Dade County and the United States Army Corps of Engineers. This section shall only apply to mining activities which are continuous and carried out on land contiguous to mining operations that were in existence on or before October 1, 1984.

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant to this section. The governing boards and the department are authorized to review and take final agency

action on petitions requesting such variances for those activities they regulate under this part and s. 373.4145.

(18) The department and each water management district responsible for implementation of the environmental resource permitting program shall develop a uniform mitigation assessment method for wetlands and other surface waters. The department shall adopt the uniform mitigation assessment method by rule no later than July 31, 2002. The rule shall provide an exclusive and consistent process for determining the amount of mitigation required to offset impacts to wetlands and other surface waters, and, once effective, shall supersede all rules, ordinances, and variance procedures from ordinances that determine the amount of mitigation needed to offset such impacts. Once the department adopts the uniform mitigation assessment method by rule, the uniform mitigation assessment method shall be binding on the department, the water management districts, local governments, and any other governmental agencies and shall be the sole means to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits. A water management district and any other governmental agency subject to chapter 120 may apply the uniform mitigation assessment method without the need to adopt it pursuant to s. 120.54. It shall be a goal of the department and water management districts that the uniform mitigation assessment method developed be practicable for use within the timeframes provided in the permitting process and result in a consistent process for determining mitigation requirements. It shall be recognized that any such method shall require the application of reasonable scientific judgment. The uniform mitigation assessment method must determine the value of functions provided by wetlands and other surface waters considering the current conditions of these areas, utilization by fish and wildlife, location, uniqueness, and hydrologic connection, and, when applied to mitigation banks, the factors listed in s. 373.4136(4). The uniform mitigation assessment method shall also account for the expected time-lag associated with offsetting impacts and the degree of risk associated with the proposed mitigation. The uniform mitigation assessment method shall account for different ecological communities in different areas of the state. In developing the uniform mitigation assessment method, the department and water management districts shall consult with approved local programs under s. 403.182 which have an established mitigation program for wetlands or other surface waters. The department and water management districts shall consider the recommendations submitted by such approved local programs, including any recommendations relating to the adoption by the department and water management districts of any uniform mitigation methodology that has been adopted and used by an

approved local program in its established mitigation program for wetlands or other surface waters. Environmental resource permitting rules may establish categories of permits or thresholds for minor impacts under which the use of the uniform mitigation assessment method will not be required. The application of the uniform mitigation assessment method is not subject to s. 70.001. In the event the rule establishing the uniform mitigation assessment method is deemed to be invalid, the applicable rules related to establishing needed mitigation in existence prior to the adoption of the uniform mitigation assessment method, including those adopted by a county which is an approved local program under s. 403.182, and the method described in paragraph (b) for existing mitigation banks, shall be authorized for use by the department, water management districts, local governments, and other state agencies.

(a) In developing the uniform mitigation assessment method, the department shall seek input from the United States Army Corps of Engineers in order to promote consistency in the mitigation assessment methods used by the state and federal permitting programs.

(b) An entity which has received a mitigation bank permit prior to the adoption of the uniform mitigation assessment method shall have impact sites assessed, for the purpose of deducting bank credits, using the credit assessment method, including any functional assessment methodology, which was in place when the bank was permitted; unless the entity elects to have its credits redetermined, and thereafter have its credits deducted, using the uniform mitigation assessment method.

(19)

(a) Financial responsibility for mitigation for wetlands and other surface waters required by a permit issued pursuant to this part for activities associated with the extraction of limestone and phosphate are subject to approval by the department as part of the permit application review. Financial responsibility for permitted activities that will occur over a period of 3 years or less of mining operations must be provided to the department before the commencement of mining operations and must equal 110 percent of the estimated mitigation costs for wetlands and other surface waters affected under the permit. For permitted activities that will occur over a period of more than 3 years of mining operations, the initial financial responsibility demonstration must equal 110 percent of the estimated mitigation costs for wetlands and other surface waters affected in the first 3 years of operation under the permit. For each year thereafter, the financial responsibility demonstration must be updated, including providing an amount equal to 110

percent of the estimated mitigation costs for the next year of operations under the permit for which financial responsibility has not already been demonstrated and to release portions of the financial responsibility mechanisms in accordance with applicable rules.

(b) The mechanisms for providing financial responsibility pursuant to the permit shall, at the discretion of the applicant, include the following:

1. Cash or cash equivalent deposited in an escrow account.

2. Irrevocable letter of credit.

3. Performance bond.

4. Trust fund agreement.

5. Guarantee bond.

6. Insurance certificate.

7. A demonstration that the applicant meets the financial test and corporate guarantee requirements set forth in 40 C.F.R. s. 264.143(f).

8. A demonstration that the applicant meets the self-bonding provision set forth in 30 C.F.R. s. 800.23.

The form and content of all financial responsibility mechanisms shall be approved by the department. When utilizing an irrevocable letter of credit, performance bond, or guarantee bond, all payments made thereunder shall be deposited into a standby trust fund established contemporaneously with the posting of the financial assurance instrument. All trust fund agreements and standby trust fund agreements shall provide that distributions therefrom will be made only at the request of the department and that the trustees of such funds shall be either a national or state-chartered banking institution or a state-regulated trust company.

(c) The provisions of this subsection shall not apply to any mitigation for wetlands and other surface waters that is required pursuant to a permit or permits initially issued by the department or district prior to January 1, 2005.

(d) Nothing provided in this subsection supersedes or modifies the financial responsibility requirements of s. 378.208.

FL Stat § 373.4141. Permits; processing.

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application.

(2) A permit shall be approved, denied, or subject to a notice of proposed agency action within 60 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(3) Processing of applications for permits for affordable housing projects shall be expedited to a greater degree than other projects.

(4) A state agency or an agency of the state may not require as a condition of approval for a permit or as an item to complete a pending permit application that an applicant obtain a permit or approval from any other local, state, or federal agency without explicit statutory authority to require such permit or approval.

FL Stat § 373.4143. Declaration of policy.

It is the policy of the Legislature that the state provide efficient government services by consolidating, to the maximum extent practicable, federal and state permitting associated with wetlands and navigable waters within the state.

FL Stat § 373.4145. Part IV permitting program within the geographical jurisdiction of the Northwest Florida Water Management District.

(1) Within the geographical jurisdiction of the Northwest Florida Water Management District, taking into consideration the differing physical and natural characteristics of the area, the department and the district shall:

(a) Jointly develop rules to regulate the construction, operation, alteration, maintenance, abandonment, and removal of stormwater management systems. The department shall initiate the rulemaking process within 60 days after the effective date of this

act and shall implement the rules no sooner than January 1, 2007; the district may implement the rules without adoption pursuant to s. 120.54. Until the stormwater management system rules take effect, chapter 62-25, Florida Administrative Code, shall remain in full force and effect and shall be implemented by the department. Notwithstanding the provisions of this section, chapter 62-25, Florida Administrative Code, may be amended by the department as necessary to comply with any requirements of state or federal laws or regulations, or any condition imposed by a federal program, or as a requirement for receipt of federal grant funds. The intent of the rules created under this paragraph is to update existing stormwater rules, to improve water quality and flood protection, and to apply the least restrictive measures and criteria adopted in other water management district rules.

(b) Jointly develop rules for the management and storage of surface waters under this part. The department shall initiate the rulemaking process within 60 days after the effective date of this act and shall implement the rules no sooner than January 1, 2008; the district may implement the rules without adoption pursuant to s. 120.54. Until the rules for the management and storage of surface waters under this part take effect, rules adopted pursuant to the authority of ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994, shall remain in full force and effect and shall be implemented by the department. However, the department is authorized to establish additional exemptions and general permits for dredging and filling, if such exemptions or general permits do not allow significant adverse impacts to occur individually or cumulatively. However, for the purpose of chapter 62-312, Florida Administrative Code, the landward extent of surface waters of the state identified in rule 62-312.030(2), Florida Administrative Code, shall be determined in accordance with the methodology in rules 62-340.100 through 62-340.600, Florida Administrative Code. In implementing s. 373.421(2), the department shall determine the extent of those surface waters and wetlands within the regulatory authority of the department as described in this paragraph. At the request of the petitioner, the department shall also determine the extent of surface waters and wetlands that can be delineated by the methodology ratified in s. 373.4211, but that are not subject to the regulatory authority of the department as described in this paragraph. The intent of the rules created under this paragraph is to improve the management and storage of surface waters with minimal impact on property interests and to consider the rural nature, current development trends, and abundant natural

resources of the district relative to the permitting thresholds and requirements.

(c) Pursue streamlining of the federal and state wetland permitting programs pursuant to ss. 373.4143 and 373.4144.

(d) Implement, to the maximum extent possible, streamlining measures, including electronic permitting, field permitting, and certification programs for activities with minimal individual or cumulative impact, informal wetland determinations, and other similar measures.

(2) The rules adopted under subsection (1), as applicable, shall:

(a) Incorporate the exemptions in ss. 373.406 and 403.813(1).

(b) Incorporate the provisions of rule 62-341.475(1)(f), Florida Administrative Code, applicable to single-family homes located entirely or partially within wholly owned, isolated wetlands.

(c) Exempt from the notice and permitting requirements of this part the construction or private use of a single-family dwelling unit, duplex, triplex, or quadruplex that:

1. Is not part of a larger common plan of development or sale proposed by the applicant.

2. Does not involve wetlands or other surface waters.

(d) Incorporate the exemptions and general permits that are effective under this part and have been enacted by rule by the department and other water management districts, including the general permits authorized by s. 403.814.

(e) Provide an exemption for the repair, stabilization, or paving of county-maintained roads existing on or before January 1, 2002, and the repair or replacement of bridges that are part of the roadway consistent with the provisions of s. 403.813(1)(t), notwithstanding the provisions of s. 403.813(1)(t)7. requiring adoption of a general permit applicable within the Northwest Florida Water Management District and the repeal of such exemption upon the adoption of a general permit.

(f) Exempt from rule criteria under paragraph (1)(b) an alteration of a wholly owned, artificial surface water created entirely from uplands that does not connect to surface waters of the state, except for those created for the purpose of providing mitigation under this part.

(3) The department and the Northwest Florida Water Management District shall enter into an operating agreement under s. 373.046 to effectively implement this section and provide the district with the amount of responsibility under the agreement that resources allow, including, at a minimum, the responsibility for regulating silviculture and agriculture. The operating agreement shall encourage local delegation of the responsibilities under this section pursuant to s. 373.441.

(4) The provisions of s. 373.414(11)-(14) shall not apply to rules adopted under this section.

(5) The following activities shall continue to be governed by the provisions of s. 373.4145, 1994 Supplement to the Florida Statutes 1993:

> (a) The operation and routine custodial maintenance of activities legally in existence before the effective date of the rules adopted under subsection (1), as long as the terms and conditions of the permit, exemption, or other authorization for such activities continue to be met.
>
> (b) The activities approved in a permit issued pursuant to s. 373.4145, 1994 Supplement to the Florida Statutes 1993, and the review of activities proposed in applications received and completed before the effective date of the rules adopted under subsection (1), as applicable. This paragraph shall also apply to any modification of the plans, terms, and conditions of a permit issued pursuant to s. 373.4145, 1994 Supplement to the Florida Statutes 1993, that lessens the environmental impact, except that any such modification shall not extend the time limit for construction beyond 2 additional years.

This subsection shall not apply to any activity that is altered, modified, expanded, abandoned, or removed after adoption of the applicable rules under subsection (1).

(6) Unless the petitioner elects to apply chapter 62-340, Florida Administrative Code, to all wetlands, the delineation of the landward extent of wetlands and other surface waters for petitions filed under s. 373.421(2) prior to the effective date of the rules adopted under paragraph (1)(b) shall continue to be determined in accordance with rule 62-312.030(2), Florida Administrative Code, in effect July 1, 1994, and rules 62-340.100 through 62-340.600, Florida Administrative Code, as ratified in s. 373.4211.

(7) If the Legislature in any given fiscal year fails to fund and staff the environmental resource permitting program established under this section, the environmental resource permitting program shall be suspended for that fiscal year and the rules and statutes governing

development activity in the district shall revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with this section.

FL Stat § 373.416. Permits for maintenance or operation.

(1) Except for the exemptions set forth in this part, the governing board or department may require such permits and impose such reasonable conditions as are necessary to assure that the operation or maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto, will not be inconsistent with the overall objectives of the district, and will not be harmful to the water resources of the district.

(2) Except as otherwise provided in ss. 373.426 and 373.429, a permit issued by the governing board or department for the maintenance or operation of a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works shall be permanent, and the sale or conveyance of such dam, impoundment, reservoir, appurtenant work, or works, or the land on which the same is located, shall in no way affect the validity of the permit, provided the owner in whose name the permit was granted notifies the governing board or department of such change of ownership within 30 days of such transfer.

(3) The governing boards shall, by November 1, 1990, establish by rule requirements for the monitoring and maintenance of stormwater management systems.

FL Stat § 373.417. Citation of rule.

In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

FL Stat § 373.418. Rulemaking; preservation of existing authority.

(1) It is the intent of the Legislature that stormwater management systems be regulated under this part incorporating all of existing requirements contained in or adopted pursuant to this chapter and chapter 403. Neither the department nor governing boards are limited or prohibited from amending any regulatory requirement applicable to stormwater management systems in accordance with the provisions of this part. It is further the intent of the Legislature that all current exemptions under this chapter and chapter 403 shall

remain in full force and effect and that this act shall not be construed to remove or alter these exemptions.

(2) In order to preserve existing requirements, all rules of the department or governing boards existing on July 1, 1989, except for rule 17-25.090, Florida Administrative Code, shall be applicable to stormwater management systems and continue in full force and effect unless amended or replaced by future rulemaking in accordance with this part.

(3) The department or governing boards have authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part. Such rules shall be consistent with the water resource implementation rule and shall not allow harm to water resources or be contrary to the policy set forth in s. 373.016.

(4) The department or the governing boards are authorized to adopt by rule performance criteria for the review of groundwater discharge of stormwater. Upon adoption of such performance criteria the department shall not require a separate groundwater permit for permitted stormwater facilities.

FL Stat § 373.419. Completion report.

Within 30 days after the completion of construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, the permittee shall file a written statement of completion with the governing board or department. The governing board or department shall designate the form of such statement and such information as it shall require.

FL Stat § 373.421. Delineation methods; formal determinations.

(1) The Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. 373.019(27). This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. This methodology shall also include provisions for determining the extent of surface waters other than wetlands for the purposes of regulation under s. 373.414. This methodology shall not become effective until ratified by the Legislature. Subsequent to legislative ratification, the wetland definition in s. 373.019(27) and the adopted wetland methodology shall be binding on the department, the water management districts, local governments, and any other governmental entities. Upon ratification of such wetland methodology, the Legislature preempts the authority of any water management district, state or regional agency, or local government to define wetlands or develop a delineation methodology to implement the definition and determines that the exclusive definition and delineation methodology for wetlands

shall be that established pursuant to s. 373.019(27) and this section. Upon such legislative ratification, any existing wetlands definition or wetland delineation methodology shall be superseded by the wetland definition and delineation methodology established pursuant to this chapter. Subsequent to legislative ratification, a delineation of the extent of a surface water or wetland by the department or a water management district, pursuant to a formal determination under subsection (2), or pursuant to a permit issued under this part in which the delineation was field-verified by the permitting agency and specifically approved in the permit, shall be binding on all other governmental entities for the duration of the formal determination or permit. All existing rules and methodologies of the department, the water management districts, and local governments, regarding surface water or wetland definition and delineation shall remain in full force and effect until the common methodology rule becomes effective. However, this shall not be construed to limit any power of the department, the water management districts, and local governments to amend or adopt a surface water or wetland definition or delineation methodology until the common methodology rule becomes effective.

(2) A water management district or the department may provide a process by rule for formal determinations of the extent of surface waters and wetlands, as delineated in subsection (1). By interagency agreement, the department and each water management district shall determine which agency shall implement the determination process within the district. If a rule is adopted, a property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in property may petition the district for a formal determination. In such rule, the governing board or the department shall specify information which must be provided and may require authorization to enter upon the property. The rule shall also establish procedures for issuing a formal determination. The governing board may authorize its executive director to issue formal determinations. The governing board must by rule prescribe the circumstances in which its executive director may issue such determinations. The governing board or the department may require a fee to cover the costs of processing and acting upon the petition. That fee must be established by rule. A water management district or the department may publish, or require the petitioner to publish at the petitioner's expense, notice of the intended agency action on the petition for a formal determination in a newspaper of general circulation within the affected area. Within 60 days prior to the expiration of a formal determination, the property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in the property may petition for a new formal determination for the same parcel of property and such determination shall be issued, approving the same extent of surface waters and

wetlands in the previous formal determination, as long as physical conditions on the property have not changed, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands and the methodology for determining the extent of surface waters and wetlands authorized by subsection (1) has not been amended since the previous formal determination. The application fee for such a subsequent petition shall be less than the application fee for the original determination.

(3) A formal determination is binding for a period not to exceed 5 years as long as physical conditions on the property do not change, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands, as delineated in subsection (1).

(4) The governing board or the department may revoke a formal determination if it finds that the petitioner has submitted inaccurate information to the district.

(5) A formal determination obtained under this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable under s. 120.565. Sections 120.569 and 120.57 apply to formal determinations under this section.

(6) The district or the department may also issue nonbinding informal determinations or otherwise institute determinations on its own initiative as provided by law. A nonbinding informal determination of the extent of surface waters and wetlands issued by the South Florida Water Management District or the Southwest Florida Water Management District, between July 1, 1989, and the effective date of the methodology ratified in s. 373.4211, shall be validated by the district if a petition to validate the nonbinding informal determination is filed with the district on or before October 1, 1994, provided:

(a) The petitioner submits the documentation prepared by the agency, and signed by an agency employee in the course of the employee's official duties, at the time the nonbinding informal determination was issued, showing the boundary of the surface waters or wetlands;

(b) The request is accompanied by the appropriate fee in accordance with the fee schedule established by district rule;

(c) Any supplemental information, such as aerial photographs and soils maps, is provided as necessary to ensure an accurate determination;

(d) District staff verify the delineated surface water or wetland boundary through site inspection; and

(e) Following district verification, and adjustment if necessary, of the boundary of surface waters or wetlands, the petitioner submits a survey certified pursuant to chapter 472, which depicts the surface water or wetland boundaries. The certified survey shall contain a legal description of, and the acreage contained within, the boundaries of the property for which the determination is sought. The boundaries must be witnessed to the property boundaries and must be capable of being mathematically reproduced from the survey.

Validated informal nonbinding determinations issued by the South Florida Water Management District and the Southwest Florida Water Management District shall remain valid for a period of 5 years from the date of validation by the district, as long as physical conditions on the property do not change so as to alter the boundaries of surface waters or wetlands. A validation obtained under this section is final agency action. Sections 120.569 and 120.57 apply to validations under this section.

(7)

(a) This subsection is intended to restore qualified developments to their pre-Henderson Wetland Protection Act status for contiguous wetlands. This provision will therefore streamline state wetland permitting without loss of wetland protection by other governmental entities.

(b) Wetlands contiguous to surface waters of the state as defined in s. 403.031(13), Florida Statutes (1991), shall be delineated pursuant to the department's rules as such rules existed prior to January 24, 1984, while wetlands not contiguous to surface waters of the state as defined in s. 403.031(13), Florida Statutes (1991), shall be delineated pursuant to the applicable methodology ratified by s. 373.4211 for any development which obtains an individual permit from the United States Army Corps of Engineers under 33 U.S.C. s. 1344:

1. Where a jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, is revalidated pursuant to s. 373.414(13) and the affected lands are part of a project for which a vested rights determination has been issued pursuant to s. 380.06, or

2. Where the lands affected were grandfathered pursuant to s. 403.913(6), Florida Statutes (1991), and proof of prior

notification pursuant to s. 403.913(6), Florida Statutes (1991), is submitted to the department within 180 days of the publication of a notice by the department of the existence of this provision. Failure to timely submit the proof of prior notification to the department serves as a waiver of the benefits conferred by this subsection.

3. This subsection shall not be applicable to lands:

a. Within the geographical area to which an individual or general permit issued prior to June 1, 1994, under rules adopted pursuant to this part applies; or

b. Within the geographical area to which a conceptual permit issued prior to June 1, 1994, under rules adopted pursuant to this part applies if wetland delineations were identified and approved by the conceptual permit as set forth in s. 373.414(12)(b)1. or 2.; or

c. Where no development activity as defined in [1]s. 380.01(1) or (2)(a)-(d) and (f) has occurred within the project boundaries since October 1, 1986; or

d. Of a project which is not in compliance with this part or the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended.

4. The wetland delineation methodology required in this subsection shall only apply within the geographical area of an individual permit issued by the United States Army Corps of Engineers under 33 U.S.C. s. 1344. The requirement to obtain such individual permit to secure the benefit of this subsection shall not apply to any activities exempt or not subject to regulation under 33 U.S.C. s. 1344.

5. Notwithstanding subsection (1), the wetland delineation methodology required in this subsection and any wetland delineation pursuant thereto, shall only apply to agency action under this part and shall not be binding on local governments except in their implementation of this part.

FL Stat § 373.4211. Ratification of chapter 17-340, Florida Administrative Code, on the delineation of the landward extend of wetlands and surface waters.

Pursuant to s. 373.421, the Legislature ratifies chapter 17-340, Florida Administrative Code, approved on January 13, 1994, by the Environmental Regulation Commission, with the following changes:

(1) The last sentence of rule 17-340.100(1), Florida Administrative Code, is changed to read: "The methodology shall not be used to delineate areas which are not wetlands as defined in subsection 17-340.200(19), F.A.C., nor to delineate as wetlands or surface waters areas exempted from delineation by statute or agency rule."

(2) The introductory paragraph of rule 17-340.300, Florida Administrative Code, is changed to read: "The landward extent (i.e., the boundary) of wetlands as defined in subsection 17-340.200(19), F.A.C., shall be determined by applying reasonable scientific judgment to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation as set forth below. In applying reasonable scientific judgment, all reliable information shall be evaluated in determining whether the area is a wetland as defined in subsection 17-340.200(19), F.A.C."

(3) The introductory paragraph of rule 17-340.300(2), Florida Administrative Code, is changed to read: "The landward extent of a wetland as defined in subsection 17-340.200(19), F.A.C., shall include any of the following areas:"

(4) Rule 17-340.300(2)(a), Florida Administrative Code, is changed to read:

"(a) Those areas where the areal extent of obligate plants in the appropriate vegetative stratum is greater than the areal extent of all upland plants in that stratum, as identified using the method in section 17-340.400, F.A.C., and either:

"1. The substrate is composed of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance;

"2. The substrate is nonsoil, rock outcrop-soil complex, or is located within an artificially created wetland area, or

"3. One or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present

sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C."

(5) Rule 17-340.300(2)(b), Florida Administrative Code, is changed to read:

"(b) Those areas where the areal extent of obligate or facultative wet plants, or combinations thereof, in the appropriate stratum is equal to or greater than 80 percent of all the plants in that stratum, excluding facultative plants, and either:

"1. The substrate is comprised of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance;

"2. The substrate is nonsoil, rock outcrop-soil complex, or is located within an artificially created wetland area; or

"3. One or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C."

(6) Rule 17-340.300(2)(c), Florida Administrative Code, is deleted.

(7) Rule 17-340.300(2)(d), Florida Administrative Code, is changed to read:

"(c) Those areas, other than pine flatwoods and improved pastures, with undrained hydric soils which meet, in situ, at least one of the criteria listed below. A hydric soil is considered undrained unless reasonable scientific judgment indicates permanent artificial alterations to the onsite hydrology have resulted in conditions which would not support the formation of hydric soils.

"1. Soil classified according to United States Department of Agriculture's Keys to Soil Taxonomy (4th ed. 1990) as Umbraqualfs, Sulfaquents, Hydraquents, Humaquepts, Histosols (except Folists), Argiaquolls, or Umbraquults.

"2. Saline sands (salt flats-tidal flats).

"3. Soil within a hydric mapping unit designated by the U.S.D.A.-S.C.S. as frequently flooded or depressional, when the hydric nature of the soil has been field verified using the

U.S.D.A.-S.C.S. approved hydric soil indicators for Florida. If a permit applicant, or a person petitioning for a formal determination pursuant to subsection 373.421(2), F.S., disputes the boundary of a frequently flooded or depressional mapping unit, the applicant or petitioner may request that the regulating agency, in cooperation with the U.S.D.A.-S.C.S., confirm the boundary. For the purposes of section 120.60, F.S., a request for a boundary confirmation pursuant to this subparagraph shall have the same effect as a timely request for additional information by the regulating agency. The regulating agency's receipt of the final response provided by the U.S.D.A.-S.C.S. to the request for boundary confirmation shall have the same effect as a receipt of timely requested additional information.

"4. For the purposes of this paragraph only, 'pine flatwoods' means a plant community type in Florida occurring on flat terrain with soils which may experience a seasonable high water table near the surface. The canopy species consist of a monotypic or mixed forest of long leaf pine or slash pine. The subcanopy is typically sparse or absent. The ground cover is dominated by saw palmetto with areas of wire grass, gallberry, and other shrubs, grasses, and forbs, which are not obligate or facultative wet species. Pine flatwoods do not include those wetland communities as listed in the wetland definition contained in subsection 17-340.200(19) which may occur in the broader landscape setting of pine flatwoods and which may contain slash pine. Also for the purposes of this paragraph only, 'improved pasture' means areas where the dominant native plant community has been replaced with planted or natural recruitment of herbaceous species which are not obligate or facultative wet species and which have been actively maintained for livestock through mechanical means or grazing."

(8) Rule 17-340.300(2)(e), Florida Administrative Code, is changed to read:

"(d) Those areas where one or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present, and which have hydric soils, as identified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida, and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C. These areas shall not extend beyond the seasonal high water elevation."

(9) Rule 17-340.300(2)(f), Florida Administrative Code, is deleted.

(10) Rule 17-340.300(3), Florida Administrative Code, is added to read:

"(3)

(a) If the vegetation or soils of an upland or wetland area have been altered by natural or human-induced factors such that the boundary between wetlands and uplands cannot be delineated reliably by use of the methodology in subsection 17-340.300(2), F.A.C., as determined by the regulating agency, and the area has hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance, then the most reliable available information shall be used with reasonable scientific judgment to determine where the methodology in subsection 17-340.300(2), F.A.C., would have delineated the boundary between wetlands and uplands. Reliable available information may include, but is not limited to, aerial photographs, remaining vegetation, authoritative site-specific documents, or topographical consistencies.

"(b) This subsection shall not apply to any area where regional or site-specific permitted activities, or activities which did not require a permit, under sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., have altered the hydrology of the area to the extent that reasonable scientific judgment, or application of the provisions of section 17-340.550, F.A.C., indicate that under normal circumstances the area no longer inundates or saturates at a frequency and duration sufficient to meet the wetland definition in subsection 17-340.200(19), F.A.C.

"(c) This subsection shall not be construed to limit the type of evidence which may be used to delineate the landward extent of a wetland under this chapter when an activity violating the regulatory requirements of sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities,

Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., has disturbed the vegetation or soils of an area."

(11) Rule 17-340.300(4), Florida Administrative Code, is created to read:

"17-340.300(4) The regulating agency shall maintain sufficient soil scientists on staff to provide evaluation or consultation regarding soil determinations in applying the methodologies set forth in subsections 17-340.300(2) or (3), F.A.C. Services provided by the U.S.D.A.-S.C.S., or other competent soil scientists, under contract or agreement with the regulating agency, may be used in lieu of, or to augment, agency staff."

(12) Rule 17-340.400, Florida Administrative Code, is changed to read:

"17-340.400 Selection of Appropriate Vegetative Stratum.

"Dominance of plant species, as described in paragraphs 17-340.300(2)(a) and 17-340.300(2)(b), shall be determined in a plant stratum (canopy, subcanopy, or ground cover). The top stratum shall be used to determine dominance unless the top stratum, exclusive of facultative plants, constitutes less than 10 percent areal extent, or unless reasonable scientific judgment establishes that the indicator status of the top stratum is not indicative of the hydrologic conditions on site. In such cases, the stratum most indicative of onsite hydrologic conditions, considering the seasonable variability in the amount and distribution of rainfall, shall be used. The evidence concerning the presence or absence of regular and periodic inundation or saturation shall be based on in situ data. All facts and factors relating to the presence or absence of regular and periodic inundation or saturation shall be weighed in deciding whether the evidence supports shifting to a lower stratum. The presence of obligate, facultative wet, or upland plants in a lower stratum does not by itself constitute sufficient evidence to shift strata, but can be considered along with other physical data in establishing the weight of evidence necessary to shift to a lower stratum. The burden of proof shall be with the party asserting that a stratum other than the top stratum should be used to determine dominance. Facultative plants shall not be considered for purposes of determining appropriate strata or dominance."

(13) Rule 17-340.450(1), Florida Administrative Code, is changed by deletion of the following plant species: Habenaria repens, Schoenus nigricans, and Ulmus americana.

(14) Rule 17-340.450(2), Florida Administrative Code, is changed by deletion of the following plant species: Bucida buceras, Bumelialycioides,

Conoclinium coelestinum, Coreopsis tripteris, Erithralis fruticosa, Eryngium baldwini, Eustachys petracea, Helianthus floridanus, Muhlenbergia expansa, Myrsine quianensis, Peperomia floridana, Scutellaria floridana, Scutellaria integrifolia, Stillingia sylvatica var. tenuis, Tripsacum dactyloides, Verbesina virginica, and Wisteria frutescens, Aletris spp., Alopecurus carolinianus, Carphephorus odoratissimus, Carphephorus paniculata, Chasmanthium spp., Elytraria caroliniensis, Euthamia spp., Flaveria spp., Gratiola spp., Habenaria spp. except Habenaria repens (OBL), Hibiscus tiliaceus, Ilex opaca var. opaca, Lilium catesbaei, Metopium toxiferum, Morus rubra, Nephrolepis spp., Oplismenus setarius, Panicum tenue, Vaccinium elliotti, Fimbristylis spathacea, Guapira discolor, Jacquinia keyensis, Morinda royoc, Schizachyrium maritimum, Schizachyrium rhizomatum, Strumpfia maritima, Baccharis glomeruliflora, Lachnanthes caroliniana, Liatris spicata, Lyonia ligustrina, Michella repens, Sambucus conadensis, Sebastiana fruticosa, and Setaria geniculata.

(15) Rule 17-340.450(2) is changed by adding the following species: Chasmanthium spp. except Chasmanthium latifolum (FAC) and Chasmanthium sessiliflorum (FAC), Flaveria floridana, Flaveria linearis, Gratiola spp. except Gratiola hispida (FAC), and Habenaria spp., Schoenus nigricans, and Ulmus americana.

(16) Rule 17-340.450(2) is amended by adding, after the species list, the following language:

> "Within Monroe County and the Key Largo portion of Miami-Dade County only, the following species shall be listed as Facultative Wet: Alternanthera maritima, Morinda royoc, and Strumpfia maritima."

(17) Rule 17-340.450(3) is changed by deleting the following species: Bischofia javanica, Dioclea multiflora, Canella alba, Ernodea littoralis, Eugenia axillaris, Eugenia foeteda, Eugenia rhombea, Eugenia uniflora, Manilkara bahamensis, Musa spp., Pisonia rotundata, Psidium guajava, Randia aculeata, and Reynois septentrionalis, Terminalia catappa, Paspalum bifidum, Ligustrum spp., and Urena lobata.

(18) Rule 17-340.450(3) is changed by adding the following species: Bucida buceras, Bumelia lycioides, Conoclinium coelestinum, Coreopsis tripteris, Erithralis fruticosa, Eryngium baldwini, Eustachys petracea, Helianthus floridanus, Muhlenbergia expansa, Myrsine quianensis, Scutellaria floridana, Scutellaria integrifolia, Stillingia sylvatica var. tenuis, Tripsacum dactyloides, and Verbesina virginica, Aletris spp., Alopecurus carolinianus, Carphephorus odoratissimus, Carphephorus paniculata, Chasmanthium latifolum, Chasmanthium sessiliflorum, Elytraria caroliniensis,

Euthamia spp., Fimbristylis spathacea, Flaveria bidentis, Flaveria trinervia, Gratiola hispida, Heliotropium polyphyllum, Hibiscus tiliaceus, Ilex opaca var. opaca, Jacquinia keyensis, Lilium catesbaei, Metopium toxiferum, Morus rubra, Nephrolepis spp., Oplismenus setarius, Panicum tenue, Schizachyrium spp., Vaccinium elliotti, Baccharis glomeruliflora, Lachnanthes caroliniana, Liatrius spicata, Lyonia ligostrina, Sambucus canadensis, Sebastiana fruticosa, and Setaria geniculata.

(19) Rule 17-340.450(3) is amended by adding, after the species list, the following language:

> "Within Monroe County and the Key Largo portion of Miami-Dade County only, the following species shall be listed as facultative: Alternanthera paronychioides, Byrsonima lucida, Ernodea littoralis, Guapira discolor, Marnilkara bahamensis, Pisonis rotundata, Pithecellobium keyensis, Pithecellobium unquis-cati, Randia aculeata, Reynosia septentrionalis, and Thrinax radiata."

(20) Rule 17-340.500, Florida Administrative Code, is changed to read: "The indicators below may be used as evidence of inundation or saturation when used as provided in section 17-340.300, F.A.C. Several of the indicators reflect a specific water elevation. These specific water elevation indicators are intended to be evaluated with meteorological information, surrounding topography, and reliable hydrologic data or analyses when provided, to ensure that such indicators reflect inundation or saturation of a frequency and duration sufficient to meet the wetland definition in subsection 17-340.200(19), F.A.C., and not rare or aberrant events. These specific water elevation indicators are not intended to be extended from the site of the indicator into surrounding areas when reasonable scientific judgment indicates that the surrounding areas are not wetlands as defined in subsection 17-340.200(19), F.A.C.

> "(1) Algal mats. The presence or remains of nonvascular plant material which develops during periods of inundation and persists after the surface water has receded.
>
> "(2) Aquatic mosses or liverworts on trees or substrates. The presence of those species of mosses or liverworts tolerant of or dependent on surface water inundation.
>
> "(3) Aquatic plants. Defined in subsection 17-340.200(1), F.A.C.
>
> "(4) Aufwuchs. The presence or remains of the assemblage of sessile, attached, or free-living, nonvascular plants and invertebrate animals (including protozoans) which develop a community on inundated surfaces.

"(5) Drift lines and rafted debris. Vegetation, litter, and other natural or manmade material deposited in discrete lines or locations on the ground or against fixed objects, or entangled above the ground within or on fixed objects in a form and manner which indicates that the material was waterborne. This indicator should be used with caution to ensure that the drift lines or rafted debris represent usual and recurring events typical of inundation or saturation at a frequency and duration sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C.

"(6) Elevated lichen lines. A distinct line, typically on trees, formed by the water-induced limitation on the growth of lichens.

"(7) Evidence of aquatic fauna. The presence or indications of the presence of animals which spend all or portions of their life cycle in water. Only those life stages which depend on being in or on water for daily survival are included in this indicator.

"(8) Hydrologic data. Reports, measurements, or direct observation of inundation or saturation which support the presence of water to an extent consistent with the provisions of the definition of wetlands and the criteria within this rule, including evidence of a seasonal high water table at or above the surface according to methodologies set forth in Soil and Water Relationships of Florida's Ecological Communities (Florida Soil Conservation Staff 1992).

"(9) Morphological plant adaptations. Specialized structures or tissues produced by certain plants in response to inundation or saturation, which normally are not observed when the plant has not been subject to conditions of inundation or saturation.

"(10) Secondary flow channels. Discrete and obvious natural pathways of water flow landward of the primary bank of a stream watercourse and typically parallel to the main channel.

"(11) Sediment deposition. Mineral or organic matter deposited in or shifted to positions indicating water transport.

"(12) Vegetated tussocks or hummocks. Areas where vegetation is elevated above the natural grade on a mound built up of plant debris, roots, and soils so that the growing vegetation is not subject to the prolonged effects of soil anoxia.

"(13) Water marks. A distinct line created on fixed objects, including vegetation, by a sustained water elevation."

(21) Rule 17-340.600(2)(e), Florida Administrative Code, is changed to read:

> "(e) the seasonal high-water line for artificial lakes, borrow pits, canals, ditches, and other artificial water bodies with side slopes flatter than 1 foot vertical to 4 feet horizontal along with any artificial water body created by diking or impoundment above the ground."

(22) The first sentence of subsection (1) and paragraphs (1)(a) and (b) of rule 17-340.700, Florida Administrative Code, are changed to read:

> "(1) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement 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):
>
> > "(a) 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 sections 17-28.700, 17-302.520, F.A.C., Chapters 17-17, 17-600, 17-610, 17-640, 17-650, 17-660, 17-670, 17-671, 17-673, 17-701, 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 17-611, F.A.C., or section 403.0885, F.S., or its implementing rules;
>
> > "(b) 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 sections 17-28.700, 17-302.520, F.A.C., Chapters 17-17, 17-600, 17-610, 17-640, 17-650, 17-660, 17-670, 17-671, 17-673, 17-701, 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 17-611, F.A.C., or section 403.0885, F.S., or its implementing rules;"

(23) The first sentence of rule 17-340.700(2), Florida Administrative Code, is changed to read:

> "(2) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water

management districts 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:"

(24) Rule 17-340.700(7), Florida Administrative Code, is changed to read:

"(7) 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 subsection 17-340.700(1) or subsection 17-340.700(2), F.A.C. 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 paragraphs 17-340.700(1)(c) and 17-340.700(2)(a), F.A.C., 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 2 acres larger than the minimum area required to comply with the stormwater treatment requirements of the district or department. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal."

(25) The first sentence of rule 17-340.750, Florida Administrative Code, is changed to read:

"17-340.750 Exemption for 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 part of a governmental mosquito control program, and which lands were neither surface waters nor wetlands before such activities, shall be exempt from

the rules adopted by the department and water management districts to implement 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 granted pursuant to section 373.414, F.S. (1991):"

(26) Any future amendments to chapter 17-340, Florida Administrative Code, shall be submitted in bill form to the Speaker of the House of Representatives and to the President of the Senate for their consideration and referral to the appropriate committees. Such chapter amendments shall become effective only upon approval by act of the Legislature.

FL Stat § 373.422. Applications for activities on state sovereignty lands or other state lands.

If sovereignty lands or other lands owned by the state are the subject of a proposed activity, the issuance of a permit by the department or a water management district must be conditioned upon the receipt by the applicant of all necessary approvals and authorizations under chapters 253 and 258 before the undertaking of the activity. The department or the governing board must issue its permit conditioned upon the securing of the necessary consent or approvals by the applicant. Once the department has adopted rules under s. 373.427 for concurrent review of applications for permits under this part and proprietary authorizations under chapters 253 and 258 to use submerged lands, the permitting conditions required under this section cease to apply to those applications. If the approval or authorization of the board is required, the applicant may not commence any excavation, construction, or other activity until the approval or authorization has been issued.

FL Stat § 373.423. Inspection.

(1) During the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, the governing board or department pursuant to s. 403.091 shall make at its expense such periodic inspections as it deems necessary to ensure conformity with the approved plans and specifications included in the permit.

(2) If during construction or alteration the governing board or department finds that the work is not being done in accordance with the approved plans and specifications as indicated in the permit, it shall give the permittee written notice stating with which particulars of the approved plans and specifications the construction is not in compliance and shall order immediate compliance with such plans and specifications. The failure to act in accordance with the orders of the governing board or department after receipt of written notice shall result in the initiation of revocation proceedings in accordance with s. 373.429.

(3) Upon completion of the work, the executive director of the district or the Department of Environmental Protection or its successor agency shall have periodic inspections made of permitted stormwater management systems, dams, reservoirs, impoundments, appurtenant work, or works to protect the public health and safety and the natural resources of the state. No person shall refuse immediate entry or access to any authorized representative of the governing board or the department who requests entry for purposes of such inspection and presents appropriate credentials.

FL Stat § 373.426. Abandonment.

(1) Any owner of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works wishing to abandon or remove such work may first be required by the governing board or the department to obtain a permit to do so and may be required to meet such reasonable conditions as are necessary to assure that such abandonment will not be inconsistent with the overall objectives of the district.

(2) Where any permitted stormwater management system, dam, impoundment, reservoir, appurtenant work, or works is not owned nor directly controlled by the state or any of its agencies and is not used nor maintained under the authority of the owner for a period of 3 years, it shall be presumed that the owner has abandoned such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, and has dedicated the same to the district for the use of the people of the district.

(3) The title of the district to any such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be established and determined in the court appointed by statute to determine the title to real estate.

FL Stat § 373.427. Concurrent permit review.

(1) The department, in consultation with the water management districts, may adopt procedural rules requiring concurrent application submittal and establishing a concurrent review procedure for any activity regulated under this part that also requires any authorization, permit, waiver, variance, or approval described in paragraphs (a)-(d). The rules must address concurrent review of applications under this part and any one or more of the authorizations, permits, waivers, variances, and approvals described in paragraphs (a)-(d). Applicants that propose such activities must submit, as part of the permit application under this part, all information necessary to satisfy the requirements for:

(a) Proprietary authorization under chapter 253 or chapter 258 to use submerged lands owned by the board of trustees;

(b) Coastal construction permits under s. 161.041;

(c) Coastal construction control line permits under s. 161.053; and

(d) Waiver or variance of the setback requirements under s. 161.052.

The rules adopted under this section may also require submittal of such information as is necessary to determine whether the proposed activity will occur on submerged lands owned by the board of trustees. Notwithstanding s. 120.60, an application under this part is not complete and the timeframes for license approval or denial shall not commence until all information required by rules adopted under this section is received. For applications concurrently reviewed under this section, the agency that conducts the concurrent application review shall issue a notice of consolidated intent to grant or deny the applicable authorizations, permits, waivers, variances, and approvals. The issuance of the notice of consolidated intent to grant or deny is deemed in compliance with s. 120.60 timeframes for license approval or denial on the concurrently processed applications for any required permit, waiver, variance, or approval under this chapter or chapter 161. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands. If an administrative proceeding pursuant to ss. 120.569 and 120.57 is timely requested, the case shall be conducted as a single consolidated administrative proceeding on all such concurrently processed applications. Once the rules adopted pursuant to this section become effective, they shall establish the concurrent review procedure for applications submitted to both the department and the water management districts, including those applications for categories of activities requiring authorization to use board of trustees-owned submerged lands for which the board of trustees has not delegated authority to take final agency action without action by the board of trustees.

(2) In addition to the provisions set forth in subsection (1) and notwithstanding s. 120.60, the procedures established in this subsection shall apply to concurrently reviewed applications which request proprietary authorization to use board of trustees-owned submerged lands for activities for which there has been no delegation of authority to take final agency action without action by the board of trustees.

(a) Unless waived by the applicant, within 90 days of receipt of a complete application, the department or water management district shall issue a recommended consolidated intent to grant or deny on

all of the concurrently reviewed applications, and shall submit the recommended consolidated intent to the board of trustees for its consideration of the application to use board of trustees-owned submerged lands. The recommended consolidated intent shall not constitute a point of entry to request a hearing pursuant to ss. 120.569 and 120.57. Unless waived by the applicant, the board of trustees shall consider the board of trustees-owned submerged lands portion of the recommended consolidated intent at its next regularly scheduled meeting for which notice may be properly given, and the board of trustees shall determine whether the application to use board of trustees-owned submerged lands should be granted, granted with modifications, or denied. The board of trustees shall then direct the department or water management district to issue a notice of intent to grant or deny the application to use board of trustees-owned submerged lands. Unless waived by the applicant, within 14 days following the action by the board of trustees, the department or water management district shall issue a notice of consolidated intent to grant or deny on the application to use board of trustees-owned submerged lands, in accordance with the directions of the board of trustees, together with all of the concurrently reviewed applications.

(b) The timely issuance of a recommended consolidated intent to grant or deny as set forth in paragraph (a) is deemed in compliance with s. 120.60 timeframes for license approval or denial on the concurrently processed applications for any required permit, waiver, variance, or approval under this chapter or chapter 161. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands.

(c) Any petition for an administrative hearing pursuant to ss. 120.569 and 120.57 must be filed within 14 days of the notice of consolidated intent to grant or deny. Unless waived by the applicant, within 60 days after the recommended order is submitted, or at the next regularly scheduled meeting for which notice may be properly given, whichever is latest, the board of trustees shall determine what action to take on any recommended order issued under ss. 120.569 and 120.57 on the application to use board of trustees-owned submerged lands, and shall direct the department or water management district on what action to take in the final order concerning the application to use board of trustees-owned submerged lands. The department or water management district shall determine what action to take on any recommended order issued under ss. 120.569 and 120.57 regarding any concurrently processed permits, waivers, variances, or

approvals required by this chapter or chapter 161. The department or water management district shall then take final agency action by entering a consolidated final order addressing each of the concurrently reviewed authorizations, permits, waivers, or approvals. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands. Any provisions relating to authorization to use board of trustees-owned submerged lands shall be as directed by the board of trustees. Issuance of the consolidated final order within 45 days after receipt of the direction of the board of trustees regarding the application to use board of trustees-owned submerged lands is deemed in compliance with the timeframes for issuance of final orders under s. 120.60. The final order shall be subject to the provisions of s. 373.4275.

(3) After the effective date of rules adopted under this section, neither the department nor a water management district may issue a permit under this part unless the requirements for issuance of any additional required authorizations, permits, waivers, variances, and approvals set forth in this section which are subject to concurrent review are also satisfied.

(4) When both an environmental resource permit or dredge and fill permit and a waiver, or variance set forth in paragraphs (1)(b)-(d) are granted in a consolidated order, these permits shall be consolidated into a single permit to be known as a joint coastal permit.

(5) Any application fee required under s. 373.109 for a permit under this part is in addition to any fees required for any of the concurrently reviewed applications for authorizations, permits, waivers, variances, or approvals set forth in subsection (1) or subsection (2). The application fees must be allocated, deposited, and used as provided in s. 373.109.

(6) Whenever a concurrently processed application includes an application to use board of trustees-owned submerged lands, any noticing requirements of s. 253.115 shall be met, in addition to those in s. 373.413.

(7) When a water management district acts pursuant to a delegation under s. 253.002, any person instituting an administrative or judicial proceeding regarding such action shall serve a copy of the petition or complaint on the board of trustees. The department or the Department of Legal Affairs, acting on behalf of the board of trustees, may intervene in any such proceeding.

FL Stat § 373.4271. Conduct of challenge to consolidated environmental resource permit or associated variance or sovereign submerged lands authorization issued in connection with deepwater ports.

Notwithstanding s. 120.569, s. 120.57, or s. 373.427, or any other provision of law to the contrary, a challenge to a consolidated environmental resource permit or any associated variance or any sovereign submerged lands authorization proposed or issued by the Department of Environmental Protection in connection with the state's deepwater ports, as listed in s. 403.021(9), shall be conducted pursuant to the summary hearing provisions of s. 120.574; however, the summary proceeding shall be conducted within 30 days after a party files a motion for a summary hearing, regardless of whether the parties agree to the summary proceeding, and the administrative law judge's decision shall be in the form of a recommended order and does not constitute final agency action of the department. The Department of Environmental Protection shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order. The summary hearing provisions of this section apply to pending administrative proceedings; however, s. 120.574(1)(b) and (d) and (2)(a)3. and 5. do not apply to pending administrative proceedings. This section shall take effect upon this act becoming a law.

FL Stat § 373.4275. Review of consolidated orders.

(1) Beginning on the effective date of the rules adopted under s. 373.427(1), review of any consolidated order rendered pursuant to s. 373.427(1) shall be governed by the provisions of s. 373.114(1). However, the term "party" shall mean any person who participated as a party in a proceeding under ss. 120.569 and 120.57 on the concurrently reviewed authorizations, permits, waivers, variances, or approvals, or any affected person who submitted to the department, water management district, or board of trustees oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the authorization, permit, waiver, variance, or approval, provided that such testimony was cognizable within the scope of this chapter or the applicable provisions of chapter 161, chapter 253, or chapter 258 when the consolidated notice of intent includes an authorization, permit, waiver, variance, or approval under those chapters. In such cases, the standard of review shall also ensure consistency with the applicable provisions and purposes of chapter 161, chapter 253, or chapter 258 when the consolidated order includes an authorization, permit, waiver, variance, or approval under those chapters. If the consolidated order subject to review includes approval or denial of proprietary authorization to use submerged lands on which the board of trustees has previously acted, as described in s. 373.427(2), the scope of review under this section shall not encompass such proprietary decision, but the standard of review shall also ensure consistency with the applicable provisions and purposes of chapter 161 when the consolidated order includes a permit, waiver, or approval under that chapter.

(a) The final order issued under this section shall contain separate findings of fact and conclusions of law, and a ruling that individually addresses each authorization, permit, waiver, variance, and approval that was the subject of the review.

(b) If a consolidated order includes proprietary authorization under chapter 253 or chapter 258 to use submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund for an activity for which the authority has been delegated to take final agency action without action of the board of trustees, the following additional provisions and exceptions to s. 373.114(1) apply:

1. The Governor and Cabinet shall sit concurrently as the Land and Water Adjudicatory Commission and the Board of Trustees of the Internal Improvement Trust Fund in exercising the exclusive authority to review the order;

2. The review may also be initiated by the Governor or any member of the Cabinet within 20 days after the rendering of the order in which case the other provisions of s. 373.114(1)(a) regarding acceptance of a request for review do not apply; and

3. If the Governor and Cabinet find that an authorization to use submerged lands is not consistent with chapter 253 or chapter 258, any authorization, permit, waiver, or approval authorized or granted by the consolidated order must be rescinded or modified or the proceeding must be remanded for further action consistent with the order issued under this section.

(2) Subject to the provisions of subsection (3), appellate review of that part of a consolidated order granting or denying authorization to use board of trustees-owned submerged lands on which the board of trustees has previously acted, as described in s. 373.427(2), shall be only pursuant to s. 120.68.

(3) As with an appeal under s. 373.114, the proper initiation of discretionary review under this section tolls the time for seeking judicial review under s. 120.68.

FL Stat § 373.428. Federal consistency.

When an activity regulated under this part is subject to federal consistency review under s. 380.23, the final agency action on a permit application submitted under this part shall constitute the state's determination as to whether the activity is consistent with the federally approved Florida Coastal Management Program. Agencies with authority to review and comment on such activity pursuant to the

Florida Coastal Management Program shall review such activity for consistency with only those statutes and rules incorporated into the Florida Coastal Management Program and implemented by that agency. An agency which submits a determination of inconsistency to the permitting agency shall be an indispensable party to any administrative or judicial proceeding in which such determination is an issue; shall be responsible for defending its determination in such proceedings; and shall be liable for any damages, costs, and attorneys' fees should any be awarded in an appropriate action as a consequence of such determination.

FL Stat § 373.429. Revocation and modification of permits.

The governing board or the department may revoke or modify a permit at any time if it determines that a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works has become a danger to the public health or safety or if its operation has become inconsistent with the objectives of the district. The affected party may file a written petition for hearing no later than 14 days after notice of revocation or modification is served. If the executive director of the district or the division determines that the danger to the public is imminent, he or she may order a temporary suspension of the construction, alteration, or operation of the works until the hearing is concluded, or may take such action as authorized under s. 373.439.

FL Stat § 373.430. Prohibitions, violation, penalty, intent.

(1) It shall be a violation of this part, and it shall be prohibited for any person:

(a) To cause pollution, as defined in s. 403.031, except as otherwise provided in this part, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

(b) To fail to obtain any permit required by this part or by rule or regulation adopted pursuant thereto, or to violate or fail to comply with any rule, regulation, order, or permit adopted or issued by a water management district, the department, or local government pursuant to their lawful authority under this part.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this part or by any permit, rule, regulation, or order issued under this part.

(2) A person who commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) A person who willfully commits a violation specified in paragraph (1)(a) commits a felony of the third degree, punishable as provided in ss. 775.082(3)(e) and 775.083(1)(g), by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) A person who commits a violation specified in paragraph (1)(a) or paragraph (1)(b) due to reckless indifference or gross careless disregard commits a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g), by a fine of not more than $10,000 or 60 days in jail, or by both, for each offense.

(5) A person who willfully commits a violation specified in paragraph (1)(b) or who commits a violation specified in paragraph (1)(c) commits a misdemeanor of the first degree, punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than $10,000 or by 6 months in jail, or by both, for each offense.

(6) It is the intent of the Legislature that the civil penalties imposed by the court be of such amount as to ensure immediate and continued compliance with this section.

(7) All moneys recovered under the provisions of this section shall be allocated to the use of the water management district, the department, or the local government, whichever undertook and maintained the enforcement action. All monetary penalties and damages recovered by the department or the state under the provisions of this section shall be deposited into the Water Quality Assurance Trust Fund. All monetary penalties and damages recovered pursuant to this section by a water management district shall be retained and used exclusively within the territory of the water management district which collected the money. All monetary penalties and damages recovered pursuant to this subsection by a local government to which authority has been delegated pursuant to s. 373.103(8) shall be used to enhance surface water improvement or pollution control activities.

FL Stat § 373.433. Abatement.

Any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works which violates the laws of this state or which violates the standards of the governing board or the department shall be declared a public nuisance. The operation of such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be enjoined by suit by the state or any of its agencies or by a private citizen. The governing board or the department shall be a

necessary party to any such suit. Nothing herein shall be construed to conflict with the provisions of s. 373.429.

FL Stat § 373.436. Remedial measures.

(1) Upon completion of any inspection provided for by s. 373.423(3), the executive director or the department shall determine what alterations or repairs are necessary and order that such alterations and repairs shall be made within a time certain, which shall be a reasonable time. The owner of such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may file a written petition for hearing before the governing board or the department no later than 14 days after such order is served. If, after such order becomes final, the owner shall fail to make the specified alterations or repairs, the governing board or the department may, in its discretion, cause such alterations or repairs to be made.

(2) Any cost to the district or the department of alterations or repairs made by it under the provisions of subsection (1) shall be a lien against the property of the landowner on whose lands the alterations or repairs are made until the governing board or department is reimbursed, with reasonable interest and attorney's fees, for its costs.

FL Stat § 373.439. Emergency measures.

(1) The executive director, with the concurrence of the governing board, or the department shall immediately employ any remedial means to protect life and property if either:

(a) The condition of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation.

(b) Passing or imminent floods threaten the safety of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works.

(2) In applying the emergency measures provided for in this section, the executive director or the Department of Environmental Protection may in an emergency do any of the following:

(a) Lower the water level by releasing water from any impoundment or reservoir.

(b) Completely empty the impoundment or reservoir.

(c) Take such other steps as may be essential to safeguard life and property.

(3) The executive director or the Department of Environmental Protection shall continue in full charge and control of such stormwater management system, dam, impoundment, reservoir, and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased.

FL Stat § 373.441. Role of counties, municipalities, and local pollution control programs in permit processing; delegation.

(1) The department shall, by December 1, 1994, adopt rules to guide the participation of counties, municipalities, and local pollution control programs in an efficient, streamlined permitting system. Such rules must seek to increase governmental efficiency, maintain environmental standards, and include consideration of:

(a) Provisions under which the environmental resource permit program is delegated, upon approval of the department, only to a county, municipality, or local pollution control program that has the financial, technical, and administrative capabilities and desire to implement and enforce the program;

(b) Provisions under which a locally delegated permit program may have stricter environmental standards than state standards;

(c) Provisions for identifying and reconciling any duplicative permitting by January 1, 1995;

(d) Provisions for timely and cost-efficient notification by the reviewing agency of permit applications, and permit requirements, to counties, municipalities, local pollution control programs, the department, or water management districts, as appropriate;

(e) Provisions for ensuring the consistency of permit applications with local comprehensive plans;

(f) Provisions for the partial delegation of the environmental resource permit program to counties, municipalities, or local pollution control programs, and standards and criteria to be employed in the implementation of such delegation by counties, municipalities, and local pollution control programs;

(g) Special provisions under which the environmental resource permit program may be delegated to counties having populations of

75,000 or fewer, or municipalities with, or local pollution control programs serving, populations of 50,000 or fewer;

(h) Provisions for the applicability of chapter 120 to local government programs when the environmental resource permit program is delegated to counties, municipalities, or local pollution control programs; and

(i) Provisions for a local government to petition the Governor and Cabinet for review of a request for a delegation of authority that is not approved or denied within 1 year after being initiated.

(2) Any denial by the department of a local government's request for a delegation of authority must provide specific detail of those statutory or rule provisions that were not satisfied. Such detail shall also include specific actions that can be taken in order to allow for the delegation of authority. A local government, upon being denied a request for a delegation of authority, may petition the Governor and Cabinet for a review of the request. The Governor and Cabinet may reverse the decision of the department and may provide any necessary conditions to allow the delegation of authority to occur.

(3) Delegation of authority shall be approved if the local government meets the requirements set forth in rule 62-344, Florida Administrative Code. This section does not require a local government to seek delegation of the environmental resource permit program.

(4) This section does not affect or modify land development regulations adopted by a local government to implement its comprehensive plan pursuant to chapter 163.

(5) The department shall review environmental resource permit applications for electrical distribution and transmission lines and other facilities related to the production, transmission, and distribution of electricity which are not certified under ss. 403.52-403.5365, the Florida Electric Transmission Line Siting Act, regulated under this part.

FL Stat § 373.443. Immunity from liability.

No action shall be brought against the state or district, or any agents or employees of the state or district, for the recovery of damages caused by the partial or total failure of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works upon the ground that the state or district is liable by virtue of any of the following:

(1) Approval of the permit for construction or alteration.

(2) The issuance or enforcement of any order relative to maintenance or operation.

(3) Control or regulation of stormwater management systems, dams, impoundments, reservoirs, appurtenant work, or works regulated under this chapter.

(4) Measures taken to protect against failure during emergency.

FL Stat § 403.811. Dredge and fill permits issued pursuant to this chapter and s. 373.414.

Permits or other orders addressing dredging and filling in, on, or over waters of the state issued pursuant to this chapter or s. 373.414(9) before the effective date of rules adopted under s. 373.414(9) and permits or other orders issued in accordance with s. 373.414(13), (14), (15), or (16) shall remain valid through the duration specified in the permit or order, unless revoked by the agency issuing the permit. The agency issuing the permit or other order may seek to enjoin the violation of, or to enforce compliance with, the permit or other order as provided in ss. 403.121, 403.131, 403.141, and 403.161. A violation of a permit or other order addressing dredging or filling issued pursuant to this chapter is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.