ENVIRONMENTAL RESOURCE PERMIT APPLICANT'S HANDBOOK VOLUME I (GENERAL AND ENVIRONMENTAL)

All Appendices, except A, B, D and E, are incorporated by reference in subsection 62-330.010(4), F.A.C.

Effective October 1, 2013

FOR:

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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PART I -- BACKGROUND AND PROCEDURES

1.0 Introduction

The Florida Department of Environmental Protection ("Department" or "DEP") and Florida's five water management districts ("Districts" or "WMDs") developed this Applicant's Handbook to help persons understand the rules, procedures, standards, and criteria that apply to the environmental resource permit (ERP) program under Part IV of Chapter 373 of the Florida Statutes (F.S.).

The Department and each of the Districts implement the ERP program. Several local governments also implement the ERP program under the delegated authority in Section 373.441, F.S. The Applicant's Handbook refers to these entities collectively as "Agencies" and also refers to one or more water management districts as "District" or "Districts" (capitalized), respectively. The term "district" (lower case) generally refers to the main or field offices of either the Department or District. These and other terms are defined in Section 2.0 of this volume of the Applicant's Handbook (hereinafter referred to as "Volume I," or "this volume.")

Part IV of Chapter 373, F.S., regulates the construction, alteration, operation, maintenance, abandonment and removal (hereinafter referred to as "activities") of stormwater management systems, dams, impoundments, reservoirs, works and appurtenant works (hereinafter referred to as "projects"). Such projects include dredging and filling in wetlands and other surface waters, as those terms are defined in Sections 373.403(13) and (14), F.S.

The primary ERP program rules are adopted by DEP as Chapter 62-330, of the Florida Administrative Code (F.A.C.), and are also rules of the Districts and delegated local governments in accordance with the authority under Section 373.4131, F.S. The Applicant's Handbook is incorporated by reference in subsection 62-330.010(4), F.A.C., and therefore operates as a rule of the Agencies.

The Districts are:

- Northwest Florida Water Management District (NWFWMD)
- Suwannee River Water Management District (SRWMD)
- St. Johns River Water Management District (SJRWMD)
- Southwest Florida Water Management District (SWFWMD) and
- South Florida Water Management District (SFWMD)

Responsibilities of these Agencies are divided in accordance with Operating and Delegation Agreements incorporated by reference in Chapter 62-113, F.A.C., accessible at: http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm. These Agreements operate so that only one agency is responsible for permitting, compliance, and enforcement of an activity, and identify which Agency is responsible for the various types of activities. See Section 1.2, below for additional information on the division of responsibilities between the Agencies.

Chapter 62-330, F.A.C., will control in cases where the information in the Applicant's Handbook conflicts with that rule chapter.

1.1 Overview of Applicant's Handbook

This is Volume I of a two-volume ERP Applicant's Handbook. This volume and Chapter 62-330 F.A.C., are adopted by DEP and apply statewide to all activities regulated under Part IV of Chapter

373, F.S. This includes those activities for which the Districts and the delegated local governments are responsible for the review and agency action.

This Volume I provides general background information on the ERP program, including points of contact, a summary of the statutes and rules used to authorize and implement the ERP program, and the forms used to notice or apply to the Agencies for an ERP authorization. This Volume also provides discussion on:

- Activities regulated under Chapter 62-330, F.A.C., and Part IV of Chapter 373, F.S.;
- Types of permits, permit thresholds, and exemptions;
- Procedures used to review exemptions and permits;
- Conditions for issuance of an ERP, including the environmental criteria used for activities located in wetlands and other surface waters;
- Erosion and sediment control practices to prevent water quality violations;
- Operation and maintenance requirements.

Applicant's Handbook Volume II is adopted separately by DEP (for use within the NWFWMD) and by the SRWMD, SJRWMD, SWFWMD, and SFWMD (for use within the geographical area of each applicable District). These separate Volumes address regional differences in hydrology, soils, geology, and rainfall specific to each District. Each Volume II provides design and performance standards specific to the geographical area of each District. Volume II applies whether an ERP application is processed and acted on by DEP, a District, or a delegated local government. More specifically, it provides:

- Design and performance standards and criteria for water quality and quantity, including those for specific types of stormwater management systems, dams, impoundments, reservoirs, works, and appurtenant works;
- Standards and criteria pertaining to special basins that may exist within the geographic area of each District;
- Standards and criteria pertaining to flood protection; and
- Design and performance standards for dams.

Volume II primarily applies to activities that require the services of a registered professional to design a stormwater management system. A stormwater management system is defined in Sections 373.403(10) and 403.031(16), F.S., as "a system that 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." This includes most activities that create new impervious surface or that alter surface water flows.

Volume II generally is not applicable to the construction, alteration, modification, maintenance, or removal of projects that cause no more than an incidental amount of stormwater runoff, such as:

- An **individual**, single-family residence, duplex, triplex, or quadruplex **that is not part of a larger plan of development**.
- A "stand-alone" seawall, riprap revetment, other shoreline stabilization structure, and docks and piers.
- "Stand-alone, in-water" projects such as channel dredging, channel markers, mooring piles and buoys, and water testing equipment. Dredged material disposal sites are subject to specific design and performance standards (see **Volume II**).

- Activities that do not add more than a de minimis amount of impervious surface, such as the installation of overland and buried electric and communication transmission and distribution lines.
- Activities that qualify for an exemption in Rule 62-330.051, F.A.C. (see additional discussion in **sections 3.2 through 3.2.5 of this Volume**).
- Activities that qualify for a general permit (as provided in Rules 62-330.407 through 62-330.635, F.A.C., and discussed in **sections 3.1.3 and 4.2.2 of this Volume).**

Activities that qualify for the "10/2" general permit in Section 403.814(12), F.S., are not regulated under Chapter 62-330, F.A.C. (see Section 3.1.3 of this Volume for additional information on this general permit).

Many Districts have "special basins." Activities within those basins must comply with the applicable special basin criteria. Those basins are listed below; detail on the allowable activities in those basins is described in more detail in the Volume II for each District:

- Within the Northwest Florida Water Management District – Special Basin Criteria for Sensitive Karst Areas, **sections 13.0 through 13.4**, including Appendix A, in Volume II
- Within the Suwannee River Water Management District – Section 5.9 of Volume II and Chapter 40B-4, F.A.C. (Works of the District)
- Within the St. Johns River Water Management District – Chapter 40C-41, F.A.C. (Surface Water Management Basin Criteria) and Sections 24.0 through 24.8.3 of Volume II
- Within the South Florida Water Management District –
  - Chapter 40E-41, F.A.C., Surface Water Management Basin and Related Criteria
  - Chapter 40E-62, F.A.C., Works and Lands of the District Management Plans
  - Chapter 40E-63, Everglades Program
  - Rules 62-312.400 through 62-312.460, F.A.C. – activities within the Outstanding Florida Waters of Monroe County

Neither volume of this Handbook applies to "grandfathered activities" as described in **section 3.1.2**, below, except where those projects are modified, altered, abandoned, or removed in such a way as to require a permit under Chapter 62-330, F.A.C.

Throughout the Handbook Volumes, whenever there is a reference to the primary number of a section (such as "section 1.3"), the reference shall apply to all subsections of that section (such as 1.3.1 through 1.3.6), unless specified otherwise. In addition, for brevity, all future references to "this Volume," "Volume I," and "Volume II," represent references to the respective Volume or Volumes of the Applicant's Handbook.

1.2 Contacts and Division of Responsibilities

Applications, notices, and inquiries should be sent to the Agency that is responsible for the type of activity, as described in the Operating or Delegation Agreement in effect at the location of the project. The Operating and Delegation Agreements between the Agencies are incorporated by reference in subsection 62-330.010(3), F.A.C., and are accessible at http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm. They identify which Agency is responsible for the review and agency action on particular types of activities. The Operating Agreements between DEP and the SRWMD, SJRWMD, SWFWMD, and SFWMD are fundamentally similar; the Agreement between DEP and the NWFWMD differs due to funding limitations within that District. Each Delegation Agreement is specific to the

respective local government that has been delegated to implement the ERP program on behalf of DEP or District.

The geographic boundaries, and office responsibilities, and contact information for the Agencies are shown in **Appendix A**. Section 373.069(2), F.S., contains legal descriptions of the boundaries of each District.

ERP staff of the Agencies may be contacted for additional information regarding such things as:

- How and to whom to submit applications and notices;
- Permit requirements and processing procedures;
- Assistance with interpreting the ERP rules, and completing an application or notice;
- Pre-application meetings;
- The status of applications and notices received; and
- Complaints related to potential violations under Part IV of Chapter 373, F.S.

Copies of application and notice forms, other documents incorporated by reference in Chapter 62-330, F.A.C., and copies of the rules that apply to the ERP program may be obtained at http://www.dep.state.fl.us/water/wetlands/erp/rules/guide.htm.

1.3 Other Authorizations and Relationship to Other Governmental Entities

Issuance of a permit or verification of qualification for an exemption or general permit under Chapter 62-330, F.A.C., does not:

(a) Convey or create to the person any property right, or any interest in the real property;

(b) Authorize any entrance or activities on property that is not owned or controlled by the person; or

(c) Relieve persons from obtaining all other required licenses, permits, and authorizations under applicable state, federal, or local statute, rule, or ordinance. Persons are advised to obtain all required authorizations prior to constructing, altering, operating, maintaining, removing, or abandoning projects regulated under the ERP program.

Additional information on the distribution of permit applications to, and coordination with, other governmental agencies is discussed in sections **5.3.5 and 5.5.2 through 5.5.2.2** of this Volume.

1.3.1 U.S. Army Corps of Engineers (USACE)

Applicants may wish to consult with the applicable processing office of the USACE (see http://www.saj.usace.army.mil/Missions/Regulatory.aspx), and the local government if they have a wetlands regulatory program regarding any additional permitting and mitigation design considerations that may need to be addressed before, or concurrently with, submitting an application to the Agencies. Such coordination may avoid the need to redesign and modify the project to meet the requirements of those other regulatory agencies.

1.3.1.1 Joint Application, Water Quality Certification, and Coastal Zone Consistency Concurrence

An Operating Agreement was executed between the USACE, DEP, and the Districts on September 4, 2012 (a copy of which is in Appendix E and accessible at: http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm). This Agreement

coordinates the exchange of information between these agencies regarding permitting, compliance, and enforcement of activities regulated under Part IV of Chapter 373, F.S., that also require a Department of the Army (DA) permit under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, or Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972. Among other things this Agreement:

(a) Provides the process by which the Agencies and the USACE will use a joint application and other procedures to facilitate sharing of information. Within five business days of receipt of an application for an individual (including mitigation bank) or conceptual approval permit involving activities within wetlands or other surface waters, the Agencies will, at a minimum, make information from the application available to the USACE as prescribed by the Operating Agreement, except when the activities qualify as "green" under the State Programmatic General Permit discussed in **section 1.3.1.2**, below. Applicants are advised that many activities require both state and federal permits, and that work should not commence without all applicable authorizations.

(b) Discusses how issuance of an ERP permit (including a general permit) shall also constitute a water quality certification or waiver thereto under the Clean Water Act for the required DA permit. The DA permits described above cannot be issued without a state water quality certification or waiver thereto.

The State of Florida has waived water quality certification for activities that are exempt from ERP permitting requirements. See http://www.dep.state.fl.us/water/wetlands/docs/erp/USCOE_DEP_WMD_OpAgree.pdf for additional information. Additional information on the federal permitting program is available at: http://www.saj.usace.army.mil/Missions/Regulatory.aspx.

The State of Florida has provided regional conditions applicable to water quality certifications for the Nationwide Permits issued by the USACE for use in Florida — see: http://www.dep.state.fl.us/water/wetlands/erp/nwp.htm, as well as for numerous regional and programmatic general permits issued by the Jacksonville District of the USACE . http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx. Applicants are advised that activities that qualify for USACE Nationwide, Regional, or General Permits are still subject to applicable ERP and any other state, local, or regional permitting requirements.

(c) Discusses how issuance of an ERP permit (including a general permit) in coastal counties also constitutes a finding of consistency or waiver thereto of the State's statutory authorities under Florida's federally approved coastal zone management program. Any required DA permit cannot be issued without applicable coastal zone consistency concurrence or waiver. Pursuant to Section 380.23(7), F.S., applications for federally permitted or licensed activities that qualify for an exemption under the ERP program are not eligible to be reviewed for federal consistency with Part IV of Chapter 373, F.S. The Corps or any designated Federal, State or local agency administering general permits on behalf of the Corps under 33 C.F.R. § 325.2(b)(2) may presume the Florida's coastal zone consistency concurrence for exempt activities, provided the activity receives any applicable authorization to use and occupy state-owned submerged lands under Chapter 253, F.S., and, for activities located within an Aquatic Preserve, Chapter 258, F.S., and the rules of the Florida Administrative Code adopted thereunder. The Corps or any designated Federal, State or local agency administering general permits on behalf of the Corps can act on the DA permit before the applicable authorization under Chapter 253,

F.S., and, as applicable, Chapter 258, F.S., is obtained or granted, because it is understood such authorization must be obtained prior to persons using or occupying state-owned submerged lands.

1.3.1.2 State Programmatic General Permit (SPGP)

The USACE has issued an SPGP that enables the Agencies to verify whether the activities listed below qualify for a federal dredge and fill permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The SPGP streamlines permitting by not requiring persons who are conducting the above activities to be subject to separate permitting reviews by the Agencies and the USACE.

At this time, the SPGP applies statewide, except within Monroe County, but only to the following projects:

(a) Construction or restoration of certain seawalls or riprap;

(b) Construction of certain boat ramps and boat launch areas;

(c) Construction of certain docks, piers, associated facilities, and other minor piling-supported structures; and

(d) Maintenance dredging of canals and channels, including organic detrital removal from freshwater lakes and rivers.

The Agency will determine upon receipt of an ERP application or notice if the activity qualifies for the USACE SPGP. These activities are subject to several conditions and limitations, so not all of the above activities will qualify for the SPGP.

If the requested activity does not qualify for the SPGP, the Agency will forward the submitted application or notice to the USACE so they may begin processing any required Department of the Army permit; a separate application generally should NOT be sent to the USACE.

More information on the SPGP is available at http://www.dep.state.fl.us/water/wetlands/erp/spgp.htm and http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx.

1.3.2 Relationship to National Pollutant Discharge Elimination System (NPDES) Permit Program

In October of 2000, the U.S. Environmental Protection Agency authorized DEP to implement the National Pollutant Discharge Elimination System (NPDES) stormwater permitting program. However, the NPDES stormwater permitting program is a separate federal permit that is not linked to the state ERP surface water/stormwater management permit required under Chapter 62-330, F.A.C. Therefore, applicants are advised to obtain *both* any required NPDES and ERP prior to construction. The following construction activities are subject to NPDES stormwater permitting, as set forth in Section 403.0885, F.S. (see http://www.dep.state.fl.us/water/stormwater/npdes/index.htm):

(a) Contribution of stormwater discharges to surface waters of the State or into a municipal separate storm sewer system (MS4); and

(b) Disturbance of one or more acres of land. Less than one acre also is included if the activity is part of a larger common plan of development or sale that will exceed the one-acre threshold. Disturbance includes clearing, grading, and excavating.

In addition, a generic permit has been issued under subsection 62-621.300(2), F.A.C., for any person constructing or operating a system discharging produced ground water (i.e., dewatering system) from any non-contaminated site activity that discharges by a point source to surface waters of the State; this generic permit is associated with activities that are designed and operated in accordance with the general conditions in Rule 62-621.250, F.A.C. Additional information on this permit is available at: http://www.dep.state.fl.us/water/wastewater/iw/docs/62-621.300_2.pdf

Sediment and erosion control measures related to construction activities are a critical component of both the ERP and NPDES permit programs, although the permit required under the NPDES stormwater permitting program is separate from the permit required under Chapter 62-330, F.A.C. In addition to obtaining applicable permits under Chapter 62-330, F.A.C., the operator of a regulated construction site that meets the above thresholds must obtain a separate NPDES stormwater permit, and must implement appropriate pollution prevention techniques to minimize erosion and sedimentation and properly manage stormwater discharges. For NPDES purposes, DEP has adopted a Generic Permit for Construction Activities in paragraph 62-621.300(4)(a), F.A.C. Coverage under the Generic Permit for Construction Activities may be obtained electronically using DEP's Interactive Notice of Intent (iNOI) available at http://www.dep.state.fl.us/water/stormwater/npdes/index.htm or by paper copy with the appropriate application fee to DEP's Notice Processing Center in Tallahassee (see the previous Internet site for the address of that processing center and for additional information on the NPDES program). Additional information on the NPDES program is found in Part IV of this Volume and may be obtained from any DEP office.

1.3.3 Linkage with State-owned Submerged Lands Authorizations

Activities located on sovereignty submerged lands (as defined in subsection 18-21.003, F.A.C.,) also require a proprietary authorization from the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to use such lands under Chapter 253, F.S., and Chapter 18-21, F.A.C., and, if located in an aquatic preserve, Chapter 258, F.S., and Chapter 18-18 or 18-20, F.A.C. For the purposes of Chapter 62-330, F.A.C., and the Applicant's Handbook, those lands are referred to as "state-owned submerged lands," in Section 2.0(a)94, below. With the exceptions in Section 253.03(7)(b), F.S., and paragraph 18-21.005(1)(a), F.A.C., proprietary authorization is required for most activities on state-owned submerged lands, whether it requires a regulatory permit under Part IV of Chapter 373, F.S., is exempt from permitting, or falls below permitting requirements.

DEP and the Districts act as staff to the Board of Trustees, and, in accordance with the Operating Agreement between the Agencies, will process all applications involving work on state-owned submerged lands (see Appendix A of this Handbook). These Agencies have delegated authority from the Board to approve or deny most projects, but for some types of projects, the final decision to approve or deny the state-owned submerged lands authorization rests with the Governor and Cabinet, who serve as the Board of Trustees (see Rule 18-21.0051, F.A.C.).

The joint application form adopted as Form 62-330.060(1), includes an application for a permit under Part IV of Chapter 373, F.S., as well as a request for authorization to use state-owned submerged lands, when such lands are involved; applicants are not required to submit a separate application for such authorization. Upon receipt of the application, or of a notice to use a general

permit or a determination of an exemption, staff will examine the application or notice to determine whether the activity appears to be located, in whole or in part, on state-owned submerged lands. Where necessary, staff will request a title determination from DEP's Division of State Lands. Staff will then determine if authorization is required to perform the activities on those lands, or if it is automatically authorized [as a Consent by Rule—see subsection 18-21.005(1)(b), F.A.C.]. Activities located in one of the state's Aquatic Preserves must receive a separate written authorization in accordance with Chapter 258, F.S., and Rule 18-18 (within the Biscayne Bay Aquatic Preserve) or 18-20, F.A.C., (in all other Aquatic Preserves) prior to initiating any work. Other activities on state-owned submerged lands are subject to needing a letter of consent, an easement or lease, in accordance with Rule 18-21.005, F.A.C., and Chapter 253, F.S.

The approval or denial of an individually processed ERP application is linked with the approval or denial of any required state-owned submerged lands application under Section 373.427, F.S. This linkage is described in Rules 62-330.075 and 18-21.00401, F.A.C. Activities that require an individually-processed ERP cannot become complete until all required state-owned submerged lands information has been submitted as part of the permit application. In addition, the ERP permit cannot be issued unless a determination has been made that the related state-owned submerged lands application also can be issued. If an activity meets all the requirements for issuance of an ERP, but does not meet all the requirements for issuance of the state-owned submerged lands authorization, the ERP must be denied. Conversely, if the activity meets all the state-owned submerged lands requirements, but does not meet the conditions for issuance of the ERP, the state-owned submerged lands application and the ERP permit will be denied.

Activities that qualify for a general permit or an exemption are not linked. In such cases, even though an activity may be authorized by the general permit or exemption, construction, alteration, modification, maintenance, operation, abandonment, or removal of the project may not commence until the required state-owned submerged lands authorization also has been granted.

1.3.4 Consumptive Uses of Water

Section 373.406(1), F.S., states that "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."

A water use or consumptive use permit, and possibly a water well construction permit, may be required from the applicable District prior to constructing, altering, or operating projects regulated under Chapter 62-330, F.A.C., that also involve or require the withdrawal, reservations, and other uses of water in accordance with the applicable District rules. Some activities requiring a water use or consumptive use permit cannot be issued until the applicable permit under Part IV of Chapter 373, F.S., is complete and receives staff recommendation for approval.

Additional discussion on water use and consumptive uses of water is available at http://www.dep.state.fl.us/water/waterpolicy/index.htm, and at the website of each of the Districts.

1.3.5 Mine Reclamation

Chapter 378, F.S., requires the reclamation of lands disturbed by mining operations, including lands disturbed by the operation of a borrow pit where the extracted materials will be used offsite for commercial, industrial or construction use. Under the Operating Agreements between DEP

and the Districts, a District will process the ERP application for certain mines. However, the Districts do not have delegated authority to process the reclamation authorization. Applicants for mining activities are advised to contact DEP's Mining and Mitigation Program concerning the reclamation requirements. Mine operators are required to provide to DEP either a Conceptual Reclamation Plan or a Notice of Intent to Mine or Mining Other Resources unless exempt by Section 378.804, F.S.

1.4 Statutes and Rules

1.4.1 Statutes

The ERP program is authorized under Part IV of Chapter 373 F.S. More specifically, Section 373.4131, F.S., authorizes implementation of the statewide ERP rules. Chapter 120, F.S. (Administrative Procedures Act) also governs licensing, rulemaking, and administrative procedures under the ERP program. Chapter 403, F.S. (Environmental Control) governs aspects of the ERP program related to water quality, program implementation, exemptions, and general permits. Copies of these statutes are available at: http://www.leg.state.fl.us/Statutes/index.cfm?Tab=statutes&submenu=1 and from any Agency office.

1.4.2 Rules

Chapter 62-330, F.A.C., establishes the types of activities that require a permit, activities that do not require a permit, the procedures for processing a permit, the conditions for issuance of a permit, general permit conditions, and the forms associated with applications, notices, and permits. It also provides for general permits, which are pre-issued for specified activities that have been determined by rule to have minimal individual and cumulative impact.

The following additional rules of the Florida Administrative Code are related to implementing Chapter 62-330, F.A.C. Copies of rules are available at: https://www.flrules.org/, from the websites of any of the Agencies, and from any office of the Agencies. This list is not comprehensive; other state, federal and local rules and regulations also may be required for an activity.

- Chapters 28-103 through 28-108, F.A.C. (Uniform Rules of Procedure) — provide uniform rules of procedure for all state agencies regarding activities such as processing of variances, administrative hearings, mediation, and licensing. Many of these uniform procedures have been superseded by exceptions to the uniform rules of procedure in Chapter 62-110, F.A.C. (specific to DEP), and in the rules of the applicable Districts.
- Chapter 62-4 (Permits) —Rule 62-4.242, F.A.C., provides antidegradation requirements for activities located in Outstanding Florida Waters. Rule 62-4.244, F.A.C., provides criteria for mixing zones. Subsection 62-4.050(4)(h), F.A.C., provides the schedule of processing fees required for applications, notices, and petitions for ERP activities that are the responsibility of DEP and the NWFWMD.
- Chapter 62-25, F.A.C. (Regulation of Stormwater Discharge) — applies to stormwater treatment systems that qualify for grandfathering under Sections 373.414(11), (12), (13), (14), (15), (16), or 373.4145(6), F.S. Systems constructed under Chapter 62-25, F.A.C., are authorized to be operated in perpetuity, and maintenance may be conducted under such systems without a permit under Chapter 62-330, F.A.C., in perpetuity, provided the terms and conditions of the permit, exemption, or other authorization under Chapter 62-25, F.A.C., continue to be met, and provided the work is conducted in a manner that does not cause violations of water quality standards. However, if the system is altered, modified, expanded, abandoned, or removed, it is subject to being regulated by Chapter 62-330, F.A.C.

- Chapter 62-40, F.A.C. (Water Resource Implementation Rule) — provides water resource implementation goals, objectives, and guidance relating to water resources. This includes guiding principles for stormwater and surface water management programs (including the basis for minimum design criteria for the stormwater management systems), flood protection, natural systems protection and management, minimum flows and levels, and protection measures for surface water resources (including the goals for implementation of erosion and sediment control measures).
- Chapter 62-302, F.A.C. (Surface Water Quality Standards) — provides the State's numeric and narrative water quality standards criteria for surface waters, lists the classes of waters in Florida, and lists waters that are designated as Outstanding Florida Waters. Also includes the state's anti-degradation requirements.
- Chapters 62-303 (Identification of Impaired Surface Waters), 62-304, (Total Maximum Daily Loads), and 62-306, F.A.C. (Water Quality Credit Trading) — provide for identification of waters that do not meet state water quality standards and that are subject to pollution limits and recovery plans. Discharges of pollutants that cause or contribute to such impairment are subject to meeting net improvement requirements, as discussed in section 10.2.4.5 of this Volume and Volume II.
- Sections 62-312.400 through 62-312.460, F.A.C. – establish special procedures and criteria for dredging and filling within the Outstanding Florida Waters in Monroe County that are used in combination with Chapter 62-330, F.A.C. The remainder of this chapter has been repealed, but can continue to be used as it existed prior to the repeal for dredging and filling in surface waters of the state (as defined in Rule 62-312.030, F.A.C.) for applicable activities "grandfathered" under Section 373.414(11), (12), (13), (14), (15), (16), 373.4131(4), or 373.4145(6), F.S.
- Chapter 62-340 (Delineation of the Landward Extent of Wetlands and Surface Waters) — provides the procedures and methodology used by all state and local government agencies in Florida to delineate the landward extent of wetlands and other surface waters.
- Chapter 62-341 (Noticed General Environmental Resource Permits) — All of this chapter was transferred to Chapter 62-330, F.A.C., on June 4, 2012. This chapter now applies only for those activities that can be constructed within the five years of the date notice was received by DEP of the intent to use the applicable noticed general permit, or within five years of the date DEP verified that the requested activities qualified for the noticed general permit, whichever is later. Such activities remain controlled under the rules that existed prior to Chapter 62-330, F.A.C. [10-1-13]
- Chapter 62-342 (Mitigation Banks) – applies to projects proposed to be constructed and operated as a mitigation bank, and to persons seeking to purchase mitigation credits from such banks. The criteria of this chapter apply in addition to the permitting requirements of Chapter 62-330, F.A.C.
- Chapter 62-343 (Environmental Resource Permit Procedures) — contains the procedures used by DEP to review and take agency action on applications for ERPs under Part IV of Chapter 373, F.S., that are "grandfathered" under Chapter 62-330, F.A.C. More specifically, it is used in conjunction with the version of Chapter 62-330, F.A.C., in effect prior to October 1, 2013, which identifies the rules of the water management districts that are used when review and agency action on the ERP is the responsibility of DEP), and Chapter 62-341, F.A.C. (Noticed General Environmental Resource Permits). Together, those rule chapters apply to activities that were permitted, exempt from permitting, or that were subject to an application that was complete prior to the effective date of the rules adopted under Section 373.4131, F.S.
- Chapter 62-344 (Delegation of the Environmental Resource Permit Program to Local Governments) — provides procedures for delegating all or a portion of the ERP program to qualified local governments.

- Chapter 62-345 (Uniform Mitigation Assessment Method) — in accordance with Section 373.414(18), F.S., this is the sole methodology to be used to determine the amount of mitigation required to offset otherwise unpermittable adverse impacts to wetlands and other surface waters, and the amount of mitigation that is provided by proposed mitigation. This rule does not assess whether the adverse impacts meet other criteria for issuance of a permit, or whether the mitigation is appropriate to offset adverse impacts.
- Chapter 62-346 (Environmental Resource Permitting in Northwest Florida) – applicable to activities within the geographical area of the NWFWMD that were permitted, constructed, exempt from permitting, legally in existence, or subject to an application under that chapter that was complete, including activities that qualified for a noticed general permit under Chapter 62-341, F.A.C., prior to the effective date of the rules adopted under Section 373.4131, F.A.C.
- Chapter 62-520 (Ground Water Classes, Standards, and Exemptions)
- Chapter 62-532 (Water Well Permitting and Construction Requirements)
- Chapter 62-550 (Drinking Water Standards, Monitoring, and Reporting)
- Chapter 62-555 (Permitting, Construction, Operation, and Maintenance of Public Water Systems)
- Chapter 62-621 Generic Permits) – sets forth procedures to obtain a type of general National Pollutant Discharge Elimination System (NPDES) permit issued under Section 403.0885, F.S., and 40 CFR 122.28, and a type of "Non-NPDES Generic Permit" issued under Section 403.087, F.S. These are alternatives to individual permits for certain wastewater facilities and other activities that: involve the same or substantially similar types of operations; discharge the same types of wastes or engage in the same types of residuals or industrial sludge use or disposal practices; require the same effluent limitations, operating conditions, or standards for residuals or industrial sludge use or disposal; require the same or similar monitoring.
- Chapters 40B-1, 40C-1, 40D-1, and 40E-1, F.A.C. – provide the fee schedules and certain administrative details associated with permitting of applications that are the responsibility of the SRWMD, SJRWMD, SWFWMD, and SFWMD, respectively.
- Chapters 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C. — provide the regulatory requirements covering withdrawals, reservations, and other uses of water.
- Within the SRWMD, Chapter 40B-4, F.A.C., provides the permitting requirements for activities located within Works of the SRWMD. Chapters 40B-4, 40C-4, 40D-4, and 40E-4, F.A.C., also provide the standards and criteria, and general conditions for, issuance of an ERP within the SRWMD, SJRWMD, SWFWMD, and SFWMD, respectively, for an application that was complete or permitted prior to the effective date of the rules adopted under Section 373.4131, F.S., or that were legally in existence on that date.
- Chapter 40A-6 (Works of the District) — provides the permitting requirements for activities that withdraw water from, discharge to, are located on, or otherwise use a Works of the NWFWMD, primarily involving certain lands within Megginnis Creek-Megginnis Arm in Leon County. Chapters 40E-6, 40E-61, 40E-62, and 40E-63, F.A.C., provide the permitting requirements for activities are located on, or otherwise use a Works of the SFWMD, including activities within the Everglades and Lake Okeechobee.
- Chapters 40B-8, 40C-8, 40D-8, and 40E-8 — provide minimum water level and flow requirements for specified surface waters within each applicable District.
- Chapters 40C-40, 40D-40, and 40E-40, F.A.C. – provide the requirements for, conditions for issuance, and general conditions applicable to, standard general, general, and standard permits within the SJRWMD, SWFWMD, and SFWMD, respectively, that were in an application that was complete or permitted prior to the effective date of the rules adopted under Section 373.4131, F.S.

- Chapters 40A-44 and 40C-44, F.A.C. — rules of the NWFWMD and SJRWMD that provide the permitting requirements for agriculture and, in the NWFWMD, silviculture activities that do not qualify for the exemptions in Section 373.406, F.S.
- Chapters 40B-400, 40C-400, 40D-400, and 40E-400, F.A.C. — rules of the Districts that adopted noticed general permits for activities under the ERP rules in effect prior to the effective date of the rules adopted under Section 373.4131, F.S., as well as the no-noticed general permit applicable within the South Florida Water Management District in Rule 40E-400.315, F.A.C.

1.5 Administrative Criteria

1.5.1 Ownership and Control

(a) In accordance with Rule 62-330.060, F.A.C., and paragraph 62-330.301(1)(j), F.A.C., an applicant must provide reasonable assurance that permitted activities will be conducted by an entity with financial, legal, and administrative capabilities that the activity will be undertaken in accordance with the terms and conditions of a permit, if issued, and to ensure staff of the Agencies have legal authority to access the land for inspections and monitoring, as discussed in **section 1.7, below**. Compliance with this requirement must be demonstrated through subsections 62-330.060(3) and (4), F.A.C., the certification required in the Joint Application Form 62-330.060(1), and **section 12.0 of this Handbook**.

(b) In addition to the above, persons requesting activities on state-owned submerged land must submit satisfactory evidence of sufficient upland interest in accordance with paragraph 18-21.004(3)(b), F.A.C. Necessary consent, lease, easement, or other form of authorization as required under Chapter 253 and, as applicable, Chapter 258, F.S., is required prior to initiating such activities.

1.5.2 Phased Projects

Projects developed in phases will normally require the submission of a master plan showing the applicant's contiguous land holdings. The primary concerns of the Agency are to ensure continuity between phases, and satisfactory completion and operation of individual phases if the overall project is not completed as planned. Applicants desiring approval in concept of the master plan should consider submitting an application for a conceptual approval permit encompassing the total master plan. A conceptual approval permit also may be sought for phased construction as part of urban redevelopment or infill. An application to construct the first phase of the overall plan may be included as a part of the initial application for the conceptual approval permit. Procedures for requesting a conceptual approval permit are in Rules 62-330.055 and 62-330.056, F.A.C., and **sections 3.4 through 3.4.6** of this Volume.

Applications to construct or alter phases of a project for which no conceptual permit has been obtained may be considered only when each phase can be constructed, operated, and maintained totally independent of the future phases, and, an overall plan for the full build out is submitted with the application, including an overall schedule for implementing the plan and identification of any future lands that may need to implement the future phases.

1.5.3 Land Use Considerations

The proposed land use to be served by an activity regulated under Chapter 62-330, F.A.C., does not have to be consistent with the local government's comprehensive plan or existing zoning for

the site. However, it is strongly recommended that an applicant obtain the necessary land use approvals from the affected local government prior to or concurrent with the ERP permit application, since these approvals often contain conditions which impact the overall project design and, hence, the nature of the proposed activity. By obtaining these local government approvals first or concurrently, the applicant can reduce or eliminate the need for subsequent permit modifications which may be necessary as a result of conditions imposed by the local government.

When permits or authorizations issued or granted by other agencies materially affect the design or footprint of works authorized under Chapter 62-330, F.A.C., the permittee shall contact the Agency to determine if a modification of the permit is necessary under Rule 62-330.315, F.A.C., and sections 6.2 through 6.3.2.3 of this Handbook.

1.5.4 Water and Wastewater Service

As applicable, the applicant for an individual permit will be requested to provide information on how utilities, such as wells, sewage treatment or disposal (including septic tanks), lift station wet wells, and sewage force mains within the project area may affect any stormwater treatment and conveyance system, and whether activities to install or alter utility services may involve any work in wetlands or other surface waters, or any work that may affect surface water flows on or off-site, such as through the creation of temporary dikes and trenches during the installation of utility pipes and lines. This includes the status of any existing or proposed water use or consumptive use permit, if applicable. If wastewater disposal is accomplished on-site, additional information normally will be requested regarding separation of wastewater and stormwater systems.

1.5.5 Water Management Areas

Areas reserved for water management should be shown on construction plans and legally reserved for that purpose by dedication on the plat or protected through deed restrictions, easements, or other binding covenants so that subsequent owners or others may not remove such areas from their permitted use. Management areas, including maintenance easements, should be connected to a public road or other location from which operation and maintenance access is legally and physically available. Impervious areas designed for purposes such as roads, parking lots, sidewalks, or public access shall not be used as water management areas if the level or duration of standing or flowing water on these areas is a risk to vehicular traffic or pedestrian use.

1.5.6 Legal Authorization for Offsite Areas

Applicants proposing to use offsite areas not under their control to satisfy the requirements for issuance in Rule 62-330.301, F.A.C., must obtain legal authorization to do so prior to permit issuance to use the area. For example, an applicant who proposes to locate the outfall pipe from the stormwater basin to the receiving water on an adjacent property owner's land must obtain a drainage easement or other appropriate legal authorization from the adjacent owner. A copy of the legal authorization shall be submitted with the permit application.

1.6 Enforcement Authority

Parts I and IV of Chapter 373, F.S., provide for the enforcement of Agency rules by administrative and civil complaint. The Agency also has the authority to obtain the assistance of county and city officials in the enforcement of the rules (see Sections 373.603 and 373.609, F.S.). Any person who violates any provisions of Chapter 373 or 403, F.S., the rules adopted thereunder, or orders of the Agency, is subject to civil fines or criminal penalties as provided in Section 373.430, F.S.

1.7 Permission to Inspect, Monitor and Sample

Each application must include permission signed by the landowner, easement or lessee holder, or their legal designee that Agency staff may access the property where the proposed activity is located for purposes of inspecting, sampling, and monitoring the land subject to the application to determine whether the activity can meet (and if a permit is issued, is meeting) permitting criteria and permit conditions. If this is not possible, the applicant must supply the Agency with written authorization through other means (such as obtaining permission from leases and easement holders) for staff to enter onto, inspect, and conduct sampling of the site. This is necessary to prevent claims of trespass, and to ensure the applicant, and potential permittee, has approval from the entity that has sufficient real property interest over the land subject to the application to construct, alter, operate, and maintain, or remove, the project.

In the case of an easement, the easement must specifically provide for the right of governmental entities to be on the lands subject to the easement for such purposes as compliance, or such right must flow through necessity from the explicit grant of the easement.

Each permit is subject to the condition that Agency authorized staff, upon proper identification, will have permission to enter, inspect and observe, and collect samples of the activity to ensure compliance with the approved plans and specifications included in the permit. See Part 4 of Form 62-330.060(1) for additional information.

2.0 Definitions and Terms

(a) The definitions and terms below are used for purposes of Chapter 62-330, F.A.C., and this Volume I. **Section 2.1** of each District-specific Volume II contains additional definitions that apply to the design and performance standards and criteria for stormwater management systems, dams, impoundments, reservoirs, works, appurtenant works, and special basins as regulated in that District. Where a definition is in accordance with Florida Statutes, the statutory attribution is given as "[XX]."

1. "Abandon" or "Abandonment," is discussed in section 6.4 of Volume I.

2. "Activity" or "Activities," means construction, alteration, operation, maintenance, abandonment, or removal of any stormwater management system, dam, impoundment, reservoir, works [including dredging or filling, as those terms are defined in Sections 373.403(13) and (14), F.S.], and appurtenant works.

3. "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 [Section 373.403(7), F.S.]. Routine custodial maintenance and repairs shall not constitute alterations.

4. "Agency" means the Department of Environmental Protection, the water management districts, and local governments delegated authority to implement the environmental resource permit program under Part IV of Chapter 373, F.S., in accordance with Section 373.441, F.S.

5. "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. [Section 373.403(2), F.S.]

6. "Aquifer" shall mean a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells, springs or surface water.

7. "Aquatic plant" means a plant, including the roots, which typically floats on water or requires water for its entire structural support, or which will desiccate outside of water.

8. "Aquatic preserves" means those areas designated in Part II, Chapter 258, F.S.

9. "Artificial structure" means any object constructed or installed by man which has a water management effect, including, but without limitation thereof, dikes, levees, embankments, ditches, canals, conduits, channels, culverts, and pipes.

10. "Artificial waters" means bodies of water that were totally excavated from uplands, do not overlap historic wetlands or other surface waters, and were not created as a part of a mitigation plan.

11. "As-Built drawings" means plans certified by a registered professional that accurately represent the constructed condition of a project, including identifying any substantial deviations from the permitted design. See subparagraph 62-330.310(4)(a)1, F.A.C.

12. "Borrow pit" means a location where the soil or other natural deposits on or in the earth are removed from their location so as to make them suitable for use to build up land. No processing is involved, except for the use of a scalping screen to remove large rocks, wood, and other debris. The materials are used more for their bulk than their intrinsic qualities.

13. "Canal" means a man-made trench, the bottom of which is normally covered by water, with the upper edges of its two sides normally above water. [Section 403.803(2), F.S.]

14. "Canopy" means the plant stratum composed of all woody plants and palms with a trunk four inches or greater in diameter at breast height, except vines.

15. "Channel" means a trench, the bottom of which is normally covered entirely by water, with the upper edges of one or both of its sides normally below water. [Section 403.803(3), F.S.]

16. "Common plan of development or sale" or "larger plan of other commercial or residential development" means any activity that facilitates the advancement of land use (such as multiple residences, a residential subdivision, or phased site development) on the subject property, or that comprises a total land area divided into multiple lots, parcels, tracts, tiers, blocks, sites, or units, if such areas are under common ownership or control. This includes any activity on contiguous real property that comprises a total land area divided into parcels, tracts, tiers, blocks, sites, or units, and is served by a common road or road network or common stormwater management systems within that land area. Areas of land that are divided by public or private roads are considered contiguous if such areas are under common ownership or control.

17. "Completion of construction" means the time when all components of the project are installed and fully functional or when the infrastructure is used for its intended purpose, whichever occurs first. For a phased system, "completion of construction" means the time when all components for a phase of the project are installed and fully functional, or when the infrastructure for a phase is used for its intended purpose, whichever occurs first.

18. "Construction" means the creation, alteration, or abandonment of any project, including placement of fill, land clearing, earthwork, or the placement or removal of structures. Cutting of trees or removal of vegetation is not considered land clearing, except where it involves stump removal, root raking, or grubbing.

19. "Construction phase" means that period necessary to construct, alter, abandon, or remove a system in accordance with the terms and conditions of an individual permit.

20. "Conversion" means a man-made change to a wetland [as defined in Section 373.019(27), F.S.], or surface water by draining, filling, or other means which results in the permanent change of the wetland or surface water to an upland.

21. "Coral" means living stony coral and soft coral.

22. "Creation" means the establishment of new wetlands or surface waters by conversion of other land forms.

23. "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 [Section 373.403(1), F.S.]

24. "Department" means the Florida Department of Environmental Protection.

25. "Diameter at Breast Height (DBH)" means the diameter of a plant's trunk or main stem at a height of 4.5 feet above the ground.

26. "Direct discharge" means a discharge without prior opportunity for mixing and dilution sufficient to prevent a lowering of the existing ambient water quality.

27. "Direct Hydrologic Connection" means a surface water connection which occurs on an average of 30 or more consecutive days per year. In the absence of reliable hydrologic records, a continuum of naturally occurring wetlands may be used to establish a direct hydrologic connection.

28. "Discharge" means to allow or cause water to flow.

29. "District" means a water management district created pursuant to Section 373.069, F.S.

30. "Drainage basin" means a subdivision of a watershed [Section 373.403(9), F.S.].

31. "Drainage ditch" or "irrigation ditch" means a man-made trench that is dug for the purpose of draining water from the land or for transporting water for use on the land and that is not built for navigational purposes. [Section 403.803(7), F.S.]

32. "Dredging" means excavation, by any means, in surface waters or wetlands, as delineated in Section 373.421(1), F.S. Dredging 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 Section 373.421(1), F.S., directly or via an excavated water body or series of water bodies [Section 373.403(13), F.S.]

33. "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. [Section 373.403(18), F.S.]

34. "e-Permitting website" means the Agency's Internet address established to provide for submittal and viewing of applications and notices, responses to requests from the Agencies, reports, certifications, and other submittals.

35. "Embedded" means the placement of transmission or distribution lines, pipes or cables into the bottom of surface waters by minimal displacement of bottom material and without the creation of a trench, or trough, through the use of techniques such as plowing-in, weighing-in, or non-trenching jets.

36. "Endangered or threatened species" means those animal species that are identified as endangered or threatened by the US Fish and Wildlife Service, the National Marine Fisheries Service, or the Florida Fish and Wildlife Conservation Commission, as well as those plant species identified as endangered or threatened by the US Fish and Wildlife Service or National Marine Fisheries Service, when such plants are located in a wetland or other surface water.

37. "Enhancement" means improving the ecological value of wetlands, other surface waters, or uplands in comparison to their current condition.

38. "Entrenchment" means the placement of transmission or distribution lines, pipes or cables into the bottoms of waters of the state by the creation of a defined trench, or trough, through the use of such devices as clamshells, dredges, trenching jets, or other devices that produce similar results.

39. "Estuary" means a semi-enclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems. [Section 373.403(15), F.S.]

40. "Existing nesting or denning" refers to an upland site that is currently being used for nesting or denning, or is expected, based on reasonable scientific judgment, to be used for such purposes based on past nesting or denning at the site.

41. "Exotic species" means a plant species introduced to Florida, purposefully or accidentally, from a natural range outside of Florida, including naturalized exotic species (an exotic plant that sustains itself outside cultivation) and invasive exotic species (an exotic plant that not only has naturalized, but is expanding on its own in Florida native plant communities). Additional information on Florida's exotic plant species is available at: http://www.fleppc.org/.

42. "Farm pond" means a pond located on agricultural lands as defined in Section 193.461, F.S, used for agricultural activities as described in Section 403.927, F.S., and constructed, altered, maintained, and operated using the agricultural best management practices as provided in Section 403.927, F.S.

43. "Filling" means the deposition, by any means, of materials in wetlands or other surface waters, as delineated in Section 373.421(1), F.S. [Section 373.403(14), F.S.]

44. "Floodplain" means land area subject to inundation by flood waters from a river, watercourse, or lake. Floodplains are delineated according to their estimated frequency of flooding.

45. "Forested wetlands" means those wetlands where the canopy coverage by trees with a diameter at breast height of greater than 4 inches is greater than 10 percent, as well as those areas required to be planted with tree species to establish or reestablish forested wetlands pursuant to a permit issued, or enforcement action taken, under rules adopted under Part IV of Chapter 373, F.S., or Sections 403.91 through 403.929, F.S. (1984 Supp.), as amended, and those areas where the canopy has been temporarily removed but are expected to revegetate to a forested wetland if use of the area would remain unchanged.

46. "Governing Board" means the governing board of a water management district created under Section 373.069, F.S.

47. "Groundwater" means water beneath the surface of the ground, whether or not flowing through known and definite channels [Section 373.019(9), F.S.]

48. "Herbaceous wetlands" means those wetlands dominated by non-woody vegetation that have less than a 10 percent canopy coverage of with a diameter at breast height of greater than 4 inches.

49. "Hydroperiod" means the duration and range of elevation of inundation in a wetland.

50. "Impaired water" means a water body or water body segment that does not meet its applicable water quality standards as set forth in Chapters 62-302 and 62-4, F.A.C., as determined by the methodology in Part IV of Chapter 62-303, F.A.C., due in whole or in part to discharges of pollutants from point or nonpoint sources.

51. "Impervious" for purposes of applying permitting thresholds and exemption criteria, means surfaces that do not allow, or minimally allow, the penetration of water, including semi-impervious areas, but excluding wetlands or other surface waters. For other purposes, "impervious" means all artificial surfaces that that are not pervious. Included as examples are building roofs and normal concrete and asphalt pavements.

52. "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. [Sections 373.403(3) and 373.019(10), F.S.]

53. "Insect control impoundment dikes" means artificial structures, including earthen berms, constructed and used to impound waters for the purpose of insect control. [Section 403.803(10), F.S.]

54. "Isolated wetland" means any area that is determined to be a wetland in accordance with Chapter 62-340, F.A.C., but that does not have any connection via wetlands or other surface waters as determined using Rule 62-340.600, F.A.C.

55. "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. [Section 373.403(16), F.S.]

56. "Listed Species" means those species that are endangered or threatened species (as defined in definition 2.0(a)36, above), or species of special concern (as defined in definition 2.0(a)93, below).

57. "Mail" shall mean when a document is properly addressed, stamped, and deposited in the United States mail, and the postmark date shall be the date of mailing. "Mail" also shall mean when the Agency electronically sends a document to the e-mail address provided to the Agency.

58. "Maintenance" or "Repair" 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. [Section 373.403(8), F.S.]

59. "Material," when used in the context of "filling," means matter of any kind, such as, sand, clay, silt, rock, dredged material, construction debris, solid waste, pilings or other structures, ash, and residue from industrial and domestic processes. The term does not include the temporary use and placement of lobster pots, crab traps, or similar devices or the placement of oyster cultch pursuant to Section 597.010, F.S.

60. "Mine" means an area of land that is related to the removal from its location of solid substances of commercial value found in natural deposits on or in the earth, so as to make the substances suitable for commercial, industrial, or construction use, but does not include excavation solely in aid of on-site farming or on-site construction, nor the process of prospecting. As used in Chapter 62-330, F.A.C., this does not include mining operations conducted in conjunction with land development that will result in residential, industrial, commercial, or land fill uses at the end of construction. Borrow pits that use extracted material in on-site locations are not mines. For the purposes of this definition, "on-site" means, "within the contiguous limits of an area of land under one ownership or control, and upon which agricultural or construction projects are taking place. Areas of land that are divided by public or private roads are considered contiguous if such areas are under one ownership or control."

61. "Mitigation" means an action or series of actions to offset the adverse impacts that would otherwise cause an activity regulated under Part IV of Chapter 373, F.S., to fail to meet the criteria set forth in Sections 10.1.1 through 10.2.8.2 of this Volume. Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof.

62. “Mitigation bank,” “Mitigation bank permit,” “Mitigation banker” or “banker,” “Mitigation credit,” and “Mitigation service area” shall have the same meanings as provided in Chapter 62-342, F.A.C.

63. “Natural systems” for the purpose of this rule means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitat.

64. “Nuisance species” means any species of flora or fauna whose noxious characteristics or presence in sufficient number, biomass, or areal extent that prevents, or interferes with, uses or management of resources, and which are native or naturalized in the area where it occurs.

65. “Obstruction” means any fill, structure, work, appurtenant work, or system placed in waters, a floodway, or a work of the district which may impede the flow of water or otherwise result in increased water surface elevations.

66. “Offsite regional mitigation” means mitigation on land off of the site of an activity permitted under Part IV of Chapter 373, F.S., 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 Section 373.4136. [Section 373.403(22), F.S.]

67. “Operate” or “operation” means to cause or to allow a project, or a completed independent phase thereof, to function.

68. “Ordinary high water line” or “OHWL,” for the regulatory purposes of Chapter 62-330, F.A.C., means that point on the slope or bank where the surface water from the water body ceases to exert a dominant influence on the character of the surrounding vegetation and soils. The OHWL frequently encompasses areas dominated by non-listed vegetation and non-hydric soils.

69. “Other surface waters” means surface waters as described and delineated pursuant to Rule 62-340.600, F.A.C., as ratified by Section 373.4211, F.S., other than wetlands.

70. “Other watercourse” means any canal, ditch, or other artificial watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. [Section 373.019(14), F.S.]

71. “Permit area” means the area where works occur as part of an activity requiring a permit under Part IV of Chapter 373, F.S., and any mitigation, buffer, and preservation areas, and all portions of the stormwater management system serving the project area.

72. “Pollution” is the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or manmade or human-induced impairment of air or waters or alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or

injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law. [Section 403.031(7), F.S.]

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

74. "Project" — see "system."

75. "Project area" means the area where works occur as part of an activity requiring a permit under part IV of Chapter 373, F.S., or Section 403.814, F.S.

76. "Prospecting" means activities considered normal and reasonably necessary to retrieve samples of subsurface geologic sediments for the specific purpose of locating, mapping, and determining the quality and quantity of sedimentary strata or natural deposits.

77. "Reclaimed water," except as specifically provided in Chapter 62-610, F.A.C., means water that has received at least secondary treatment and basic disinfection, and is reused after flowing out of a domestic wastewater treatment facility.

78. "Recreational path" means an improved lane, path, road, trail, or walkway, whether paved, cleared, or hardened with shell, clay, rock, or other materials, to provide a corridor for travel between destinations primarily by walking, biking, or use of non-internal combustion vehicles.

79. "Regional stormwater management system" means a system designed, constructed, operated, and maintained to collect convey, store, absorb, inhibit, treat, use or reuse stormwater to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from multiple parcels and projects within the drainage area served by the regional system, where the term "drainage area" refers to the land or development that is served by or contributes stormwater to the regional system.

80. "Regional watershed" means a watershed as delineated in Rule 62-342.200, F.A.C.

81. "Residential Canal System" means those canals whose uplands are occupied predominantly by residential single-family or multi-family dwelling units.

82. "Registered Professional" means a professional registered or licensed by and in the State of Florida and practicing under Chapter 471, 472, 481, or 492, F.S.

83. "Remove" or "removal" means cessation of use and maintenance of a project, or part of a project, accompanied by elimination of all or part of the project.

84. "Reservoir" means any artificial or natural holding area that contains or will contain the water impounded by a dam. [Section 373.403(4), F.S.]

85. "Restoration" means converting back to a historic condition those wetlands, surface waters, or uplands that currently exist as a land form that differs from the historic condition. For phosphate mining and reclamation, "restoration" shall mean the recontouring and revegetation of the lands in a manner, consistent with the criteria and standards of Part II of Chapter 378, F.S., which will maintain or improve the water quality and functions of the biological systems present at the site prior to mining.

86. "Retention" means a system designed to prevent the discharge of a given volume of stormwater runoff into surface waters in the state by complete on-site storage. Examples are systems such as excavated or natural depression storage areas, pervious pavement with subgrade, or above ground storage areas.

87. "Reuse" means the deliberate application of reclaimed water, in compliance with Department and District rules, for a beneficial purpose.

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

89. "Routine custodial maintenance" means those activities described in **section 3.1.1** of this Volume.

90. "Seasonal High Water Level (SHWL)" means the elevation to which the ground and surface water can be expected to rise due to a normal wet season.

91. "Seawall" means a man-made wall or encroachment, except riprap, which is made to break the force of waves and to protect the shore from erosion. [Section 373.403(17), F.S.]

92. "Semi-impervious" means land surfaces that partially restrict the penetration of water; such as porous concrete and asphalt pavements, gravel, limerock, and certain compacted soils.

93. "Species of special concern" means those species identified as such by the Florida Fish and Wildlife Conservation Commission.

94. "State-owned submerged lands" means those lands defined as "sovereignty submerged lands" in Rule 18-21.003, F.A.C., which are: "those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated. For the purposes of [Chapter 18-21] sovereignty submerged lands shall include all submerged lands title to which is held by the Board."

95. "State water quality standards" means water quality standards adopted pursuant to Chapter 403, F.S. [Section 373.403(11), F.S.], including standards composed of designated most beneficial uses (classification of waters), the numerical and

narrative criteria applied to the specific water use or classification, the Florida anti-degradation policy (Rules 62-4.242 and 62-302.300, F.A.C.), and the moderating provisions contained in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C.

96. "Stormwater" means the flow of water that results from, and that occurs immediately following, a rainfall event.

97. "Stormwater management system" means a surface water management system that 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, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system. [Sections 373.403(10) and 403.031(16), F.S.]

98. "Stormwater harvesting" means capturing stormwater for irrigation or other beneficial use.

99. "Stormwater Retrofit" means a project that adds treatment, attenuation, or flood control to an existing stormwater management system or systems but does not serve new development or redevelopment.

100. "Stormwater utility" means the entity through which funding for a stormwater management program is obtained by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility that bills services regularly, similar to water and wastewater services.

101. "Stream" means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some part of the bed or channel shall have been dredged or improved does not prevent the watercourse from being a stream. [Section 373.019(20), F.S.]

102. "Structure" means anything constructed, installed, or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on the land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently.

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

104. "Surface water" means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface. [Section 373.019(21), F.S.]

105. "Swale" means a man-made trench that:

(a) Has a top width-to-depth ratio of the cross-section equal to or greater than 6:1, or side slopes equal to or greater than three feet horizontal to one foot vertical;

(b) Contains contiguous areas of standing or flowing water only following a rainfall event;

(c) Is planted with or has stabilized vegetation suitable for soil stabilization, stormwater treatment, and nutrient uptake; and

(d) Is designed to take into account the soil erodibility, soil percolation, slope, slope length, and drainage area so as to prevent erosion and reduce pollutant concentration of any discharge. [Section 403.803(14), F.S.]

Note: when a swale is used for stormwater treatment, it must meet the standards and criteria in Volume II.

106. "System" or "surface water management system" means a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, or any combination thereof, including areas of dredging or filling, as those terms are defined in Sections 373.403(13) and (14), F.S. For purposes of Chapter 62-330, F.A.C., and this Handbook, the term "project" generally will be used in lieu of the term "system."

107. "Total land area" means land holdings under common ownership that are contiguous, or land holdings that are served by common surface water management facilities.

108. "Total maximum daily load," or TMDL, means the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background as defined and applied in Chapter 62-303, F.A.C.

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

110. "Uplands" means areas that are not wetlands or other surface waters, as delineated pursuant to Rules 62-340.100 through 62-340.550, F.A.C., as ratified by Section 373.4211, F.S.

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

112. "Water" or "waters in the state" means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state. [Section 373.019(22), F.S.]

113. "Waters of the state" shall be as defined in Section 403.031(13), F.S.

114. "Watershed" means the land area that contributes to the flow of water into a receiving body of water. [Sections 373.403(12) and 403.031(18), F.S.]

115. "Water Management District" or "District" means a Water Management District created pursuant to Section 373.069, F.S.

116. "Water quality standards" or "State water quality standards" means those standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C.

117. "Wet detention" means the collection and temporary storage of stormwater in a permanently wet impoundment in such a manner as to provide for treatment through physical, chemical, and biological processes with subsequent gradual release of the stormwater.

118. "Wetlands," means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. [Section 373.019(27), F.S.] The landward extent of wetlands is delineated pursuant to Rules 62-340.100 through 62-340.550, F.A.C., as ratified by Section 373.4211, F.S.

119. "Wetland Normal Pool Elevation" means the elevation of sustained water levels in a wetland during the wet season, as reflected by biological indicators. Normal pool elevation is lower than the SHWL.

120. "Work of the District" means those projects and works, including, but not limited to, structures, impoundments, wells, streams, and other watercourses, together with the appurtenant facilities and accompanying lands, which have been officially adopted by the Governing Board of the District as "Works of the District." [Section 373.019(28), F.S.]

121. "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 [Section 373.403(5), F.S.] and includes all types of dredging and filling to create, remove, or locate structures in, on, or over wetlands or other surface waters.

122. "Zone of discharge" means a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded. Generally, stormwater treatment systems have a zone of discharge 100 feet from the system boundary or to the project's property boundary, whichever is less.

(b) Definitions and terms that are not defined above shall be given their ordinary and customary meaning or usage of the trade or will be defined using published, generally accepted dictionaries, together with any rules and statutes of the Agencies that have additional authority over the regulated activities.

3.0 Regulated Activities

3.1 Permits Not Required

A permit is not required under Chapter 62-330, F.A.C., for activities listed in subsection 62-330.020(1), F.A.C. Components of those provisions are discussed below.

3.1.1 Routine Custodial Maintenance

The operation and routine custodial maintenance of projects legally in existence does not require a permit under paragraph 62-330.020(1)(a), F.A.C., provided they:

(a) Comply with the terms and conditions of any permit, exemption, or other authorization previously granted for the work being operated or maintained;

(b) Do not alter, modify, expand, abandon, or remove the existing work in a manner as to require a general permit under Rule 62-330.052, F.A.C., or an individual permit under Rule 62-330.054, F.A.C.

(c) Do not cause or contribute to violations of water quality standards in receiving waters.

(d) Are routine and custodial, having no more than a minimal adverse impact on the environment. To be considered routine custodial maintenance, the activity must occur on a frequent enough basis to ensure that the project continues to function as originally designed. The Agencies recognize that a partial loss of function will occur over a period of time prior to routine custodial maintenance. However, should the project be allowed to deteriorate over a period of time to the extent that it no longer functions as originally design or proposed, then restoring the project to its original design is not exempt from the requirements to obtain a permit. Projects are considered to no longer function as designed when they no longer fulfill their originally intended purpose or the repairs needed to restore the project to original design are so extensive that they would cause more than a minimal adverse environmental impact. Some examples of originally intended purposes of projects are:

1. Stormwater systems;

2. Irrigation ditches – conveying water from a water source to a water use area;

3. Drainage ditches – draining lands to enable specific agricultural, residential, commercial or recreational land use;

4. Drainage ditches – draining lands to enable harvesting, site preparation, and regeneration of silvicultural lands during timber rotations;

5. Canals – conveying water for flood control or draining lands to enable specific land uses or navigational uses;

6. Channels – specific navigational uses; and

7. Dikes – preventing flooding to enable specific agricultural, urban or recreational land uses.

The only instance when repair of a non-functioning project would be routine custodial maintenance is when the project has lost functionality due to a sudden event such as a large storm. In such case, the repair must be conducted as soon as practical after the damage occurs, but in no case later than June 1 of the next calendar year after the damage occurred. This serves to ensure a continuity of function during the wet season, which generally occurs between June and October throughout the state. If this deadline would result in a substantial hardship or would violate principles of fairness, the maintenance entity may seek a variance or waiver from this requirement pursuant to Section 120.542, F.S.

The evaluation of environmental impacts will compare the environmental conditions prior to conducting the proposed maintenance activity with the expected environmental conditions that would result from the proposed maintenance. Environmental impacts that are considered to be more than minimal include: changing water levels in wetlands or other surface waters in a manner that adversely impacts fish and wildlife or their habitat as provided in paragraph 62-330.301(1)(d)**;** changing water levels off-site in a manner that causes flooding or other adverse impacts as described in paragraph 62-330.301(1)(a), (b), or (c), F.A.C.; or causing a violation of state water quality standards in receiving waters, as described in paragraph 62-330.301(1)(e), F.A.C.

3.1.2 "Grandfathered Activities"

A permit is not required under Chapter 62-330, F.A.C., to conduct certain activities that are "grandfathered" in accordance with the statutory provisions listed in paragraph 62-330.020(1)(c), F.A.C. Such projects are authorized to remain in existence, to remain operating, or may be constructed under the stormwater, dredge and fill, and management and storage of surface waters (MSSW) statutes and rules that existed prior to certain dates as specified below, as long as the terms and conditions of any issued permit, exemption, or other authorization for such project continue to be met, unless the applicant elects review under Chapter 62-330, F.A.C.:

(a) The effective date of the ERP program (October 3, 1995) throughout Florida, except within the geographical area of the NWFWMD, for activities under Sections 373.414(11), (12)(a), (13), (14), (15), or (16), F.S. The text of these provisions must be followed very carefully. A copy of those provisions is included in the "References and Design Aids" for Volume I, available at [http://www.dep.state.fl.us/water/wetlands/erp/forms.htm]. The following is just a brief overview, and should not be considered a complete guide to their implementation:

1. Activities approved under a valid stormwater permit under Chapters 17-25 or 62-25, F.A.C., a dredge and fill permit under Chapters 17-312 or 62-312, F.A.C., or an MSSW permit under the rules of the applicable District in effect prior October 3, 1995. Most of these permits have now expired, but the operation and maintenance phase of those activities permitted under the stormwater and MSSW rules remains in effect in perpetuity.

2. Activities within a valid jurisdictional declaratory statement submitted prior to October 3, 1995.

3. Activities for which an application was pending on June 15, 1994, and complete prior to October 3, 1995, under Chapters 17-25 or 62-25, F.A.C., Chapters 17-312 or 62-312, F.A.C., or a management and storage of surface waters (MSSW) permit under the rules of the applicable District. Most of these applications have already been permitted, denied, or withdrawn.

4. Projects legally in existence, including those in operation and those that for which construction had commenced in accordance with an exemption under Part IV of Chapter 373, F.S., or Part V of Chapter 403, F.S., prior to October 3, 1995. Most of the exemptions continue to exist in Sections 373.406 and 403.813, F.S.; to the extent an activity meets the terms and conditions of an exemption, a permit under Chapter 62-330, F.A.C., is not required.

5. Activities associated with mining operations that are included in a conceptual reclamation plan or modification submitted prior to July 1, 1996, under Sections 378.201 through 378.212, and 378.701 through 378.703, F.S.

(b) The effective date of Phase I of the ERP program within the NWFWMD (October 1, 2007), was limited to certain stormwater management systems that were either legally in existence, permitted under Chapter 62-25, F.A.C., or did not require a permit under that chapter. The effective date of Phase II of the ERP program within the NWFWMD (November 1, 2010), was expanded to all systems, including dredging and filling in, on, or over wetlands and other surface waters, including isolated wetlands. In accordance with Section 373.4145(6), F.S., the following shall continue to be governed by Section 373.4145, F.S., as it was in effect in 1994. The text of these provisions must be followed very carefully — see: http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.414.html; the following is just a brief overview, and should not be considered a complete guide to their implementation.

1. The operation and routine custodial maintenance of projects legally in existence as long as the terms and conditions of the permit, exemption, or other authorization for such projects continue to be met. Additional discussion on routine custodial maintenance is contained in **section 3.1.1, above.**

2. Activities approved in a permit issued pursuant to Section 373.4145, F.S. (1994).

3. Activities proposed in applications under Chapter 62-25, F.A.C., received and completed before November 1, 2010.

4. Any modification of the plans, terms, and conditions of a permit issued pursuant to Section 373.4145, F.S. (1994) that lessens the environmental impact, except that any such modification shall not extend the time limit for construction beyond two additional years.

These provisions shall not apply to any project that is altered or modified in a manner that: increases the water resource impact; increases the duration for construction beyond two additional years; or involves expansion, abandonment, or removal of a project after October 1, 2013.

(c) The following shall continue to be governed by the rules adopted by the Agencies under Part IV of Chapter 373, F.S., in effect before the effective date of Chapter 62-330, F.A.C.,

implementing Section 373.4131, F.S., unless the applicant elects review in accordance with Chapter 62-330, F.A.C., as it exists after that date:

1. Operation and maintenance of any project that was legally in existence before October 1, 2013, as long as the terms and conditions of the permit, exemption, or other authorization for such activity continue to be met.

2. Activities determined in writing by the Agency to be exempt from permitting under Part IV of Chapter 373, F.S., including self-certifications submitted to an Agency before October 1, 2013, as long as the terms and conditions of the exemption continue to be met.

3. Activities approved in a permit Part IV of Chapter 373, F.S., before October 1, 2013 and the review of activities proposed in a permit application that was complete before October 1, 2013. This includes any modification of such a permit, including new activities within the originally permitted project area that lessens or does not increase impacts. However, a permit modification under Chapter 62-330, F.A.C., October 1, 2013, is required if:

    a. The project will cause additional or substantially different water resource impacts, or

    b. The project does not qualify as a minor or "letter" modification under Rule 62-330.315, F.A.C.

(d) Appendix D of the NWFWMD Volume II contains guidance on the extent to which alteration of a system previously permitted under Rule 17-4.248, F.A.C. (in effect between March 1, 1979, and February 1, 1982), or Chapter 62-25, F.A.C. (Chapter 17-25, F.A.C., between February 1, 1982, and July 1994), is subject to the permitting requirements of Chapter 62-330, F.A.C.

3.1.3 "10/2 General Permit"

Paragraph 62-330.020(1)(d), F.A.C., is a reference to activities in uplands having less than 10 acres of total land area and less than two acres of impervious surface that can qualify for the general permit in Section 403.814(12), F.S. (referred to as the "10/2" general permit). This is not a general permit under Chapter 62-330, F.A.C., and does not require submittal of the notice specified in subsection 62-330.402(1), F.A.C., but does require submittal of an electronic self-certification attesting to compliance with the general permit. DEP has a portal at http://www.dep.state.fl.us/secretary/portal/default.htm that enables persons to submit a variety of self-service authorizations for exempt and general permit activities online, including certifying qualification for the 10/2 general permit. DEP's portal can be used regardless of whether regulation of the activity in the absence of the general permit would be the responsibility of the DEP, a WMD, or a delegated local government under the Operating Agreements between the Agencies. **Volume II** contains design and performance standards that are relevant to the design of activities that qualify for this general permit.

3.1.4. Permit Thresholds

Unless it is not regulated or is exempt under subsection 62-330.020(1), F.A.C. (as discussed above in sections **3.1 through 3.1.3**, above), a permit is required for any activity that, by itself or in combination with any other activity conducted after October 1, 2013, cumulatively exceeds any of the thresholds in paragraphs 62-330.020(2)(a) through (j), F.A.C. Some provisions of those thresholds are explained below:

(a) Examples of impervious or semi-impervious surface area subject to vehicular traffic, as provided in paragraph 62-330.020(2)(b), F.A.C., are roads, parking lots, driveways, and loading zones. The terms "impervious" and "semi-impervious" are defined in paragraphs 2.0(a)51. and 92, respectively, of this Volume. The impervious and semi-impervious surface areas in paragraph 62-330.020(2)(c), F.A.C., are those that do not convey or support vehicular traffic.

(b) The term "project area," as used in paragraph 62-330.020(2)(d), F.A.C., is defined in paragraph 2.0(a)75 of this Volume, and generally is the area where works (essentially movement of earth, or construction or alteration of structures) occur as part of an activity requiring a permit.

(c) As referenced in paragraph 62-330.020(2)(i), F.A.C., District-specific thresholds are in **section 1.2** of each Volume II.

(d) The term "common plan of development or sale" is defined in section **2.0(a)16**. of this Volume.

(e) Section 373.4132, F.S. provides additional information on dry storage facilities that are not subject to permitting under paragraph 62-330.020(2)(h), F.A.C.

(f) Activities that do not exceed the thresholds in paragraphs 62-330.020(2)(a) through (j) must not:

1. Cause adverse water quantity impacts to receiving waters and adjacent lands. Volume II applicable to the geographical location of the activity provides design and performance standards for meeting this criterion;

2. Cause adverse flooding to on-site or off-site property. Volume II applicable to the geographical location of the activity provides design and performance standards for meeting this criterion;

3. Cause adverse impacts to existing surface water storage and conveyance capabilities. Volume II applicable to the geographical location of the activity provides design and performance standards for meeting this criterion;

4. Cause or contribute to a violation of the water quality standards. Those standards are contained in Chapter 62-302, F.A.C., and Rule 62-4.242, F.A.C., for all surface waters, including the anti-degradation requirements for Outstanding Florida Waters, and Chapters 62-520 and 62-550, F.A.C., for ground waters; or

5. Cause adverse secondary or cumulative impacts to the water resources by itself, or in combination with activities that existed before October 1, 2013. See

Sections **10.2.7 and 10.2.8** for discussion of how the Agency evaluates the potential for secondary and cumulative impacts.

The above do not need to be evaluated by the Agencies prior to conducting activities that do not exceed the thresholds in subsection 62-330.020(2), F.A.C. However, persons are subject to potential enforcement if the construction or operation of such projects results in any of the adverse effects in (f)1. through 5, above, or the project is discovered to exceed the thresholds in subsection 62-330.020(2), F.A.C.

(g) A "Works of the District" permit pursuant to Chapter 40A-6, F.A.C. (within the NWFWMD), Chapter 40B-4, F.A.C. (within the SRWMD), and Chapter 40E-6, 40E-61, 40E-62, or 40E-63, F.A.C. (within the SFWMD), is required within those WMDs if the activity involves connection with, placement of structures in or across, or otherwise makes use of Works of the District.

3.2 Exemptions

A permit is not required for activities that are exempt under Section 373.406, 373.4145(3), or 403.813, F.S., Rule 62-330.051 or 62-330.0511, F.A.C., or Section 1.3 (District-specific exemptions) of the applicable Volume II (see Rule 62-330.020(1)(b), F.A.C.). Explanation of some of the exemptions in Part IV of Chapter 373, F.S., Chapter 403, F.S., and Rule 62-330.051, F.A.C., are provided below.

Except where required by the terms of the exemption, an application or notice to the Agency is not required for activities that meet all the terms and conditions of an exemption. However, such exemptions do not provide the authorization that may be required from other local, state, regional, or federal agencies. For example, exempt activities that occur on state-owned submerged land may require a separate letter of consent, easement, or lease under Chapters 253 and 258, F.S., and Chapters 18-20 and 18-21, F.A.C., as applicable.

If an applicant desires verification that an activity qualifies for an exemption, and information on potential state-owned submerged lands authorization, the request should be submitted following Rule 62-330.050, F.A.C., and **sections 4.2.1 and 4.4 of this Volume**.

3.2.1 Agriculture and Forestry

(a) Section 373.406(2), F.S., states that "…[N]othing 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."

Within the Panhandle, the NWFWMD reviews agricultural and forestry activities that are not exempt using Chapter 40A-44, F.A.C.; they will not require a separate ERP permit under Chapter 62-330, F.A.C., for those activities. The other Districts regulate agriculture and silviculture activities that do not qualify for the exemption using Chapter 62-330, F.A.C., and the Applicant's Handbook. The SJRWMD also uses Chapter 40C-44, F.A.C., for such regulation.

(b) Section 373.406(3), F.S., provides that "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." A "closed system" is defined in Section 373.403(6), F.S., and a surface water management permit is not required for such systems if the activity is not conducted in wetlands. This subsection shall not be construed to eliminate the need to meet generally accepted engineering practices for the design, construction, operation, and maintenance of dams, dikes, or levees.

(c) The SWFWMD has a voluntary Agricultural Ground and Surface Water Management (AGSWM) program to assist the agriculture industry in implementing best management practices designed to minimize adverse impacts to water resources. See **sections 1.3 and 6.9 of the SWFWMD Volume II** for additional information.

(d) DEP will regulate activities on agricultural or forestry lands that are non-agricultural in nature and that are otherwise the responsibility of DEP in accordance with the Operating Agreements between the Agencies, such as an individual single-family residence, duplex, triplex, or quadruplex that is incidental to an agriculture or forestry activity, or a concentrated animal feeding operation (CAFO) operating under an Industrial Waste Permit issued by DEP.

(e) Construction or alteration of systems such as roads for future development will not be considered agriculture or silviculture activities, and will be regulated under Chapter 62-330, F.A.C.

3.2.2 Individual Single-Family Residence, Duplex, Triplex, or Quadruplex

(a) Subsection 62-330.051(13), F.A.C., exempts from the noticing and permitting requirements of Chapter 62-330, F.A.C., the construction or private use of an individual, single-family dwelling unit, duplex, triplex, or quadruplex that:

1. Is not part of a larger common plan of development or sale;

2. Does not involve work in wetlands or other surface waters; and

3. Does not require a modification of a permit issued under part IV of Chapter 373, F.S.

This exemption does not apply within the Wekiva River Protection Area within Lake, Seminole, and Orange Counties (see **section 1.2 of the SJRWMD Volume II**).

(b) Section 403.813(1)(q), F.S., exempts the construction, operation, or maintenance of stormwater management facilities that are designed to serve single-family residential projects, including duplexes, triplexes, and quadruplexes, if they are less than 10 acres total land and have less than 2 acres of impervious surface and if the facilities:

1. Comply with all regulations or ordinances applicable to stormwater management and adopted by a city or county;

2. Are not part of a larger common plan of development or sale; and

3. Discharge into a stormwater discharge facility exempted or permitted by DEP under this chapter which has sufficient capacity and treatment capability as specified in this chapter and is owned, maintained, or operated by a city, county, special district with drainage responsibility, or water management district; however, this exemption does not authorize discharge to a facility without the facility owner's prior written consent.

Activities qualifying for the provisions in **paragraph (a) or (b), above,** are not required to comply with the provisions in the **Volume II**.

3.2.3 Maintenance Dredging and Maintenance of Insect Control Systems

Exemptions for certain maintenance activities are provided in Section 403.813(1)(f) and (g), F.S., and are described in detail below. The exemption in Section 403.813(1)(f), F.S., authorizes maintenance dredging of existing manmade canals and channels, including navigation basins and ship's berths; intake and discharge structures; and previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements. The exemption in Section 403.813(1)(g), F.S., addresses the maintenance of existing insect control structures, dikes, and irrigation and drainage ditches. A number of limitations and conditions apply to these exemptions, as summarized below.

(a) Original design specifications/configurations.

1. Section 403.813(1)(f), F.S., requires that no more dredging be performed than is necessary to restore the canals, channels, intake and discharge structures and previously dredged portions of natural water bodies, to original design specifications or configurations. Section 403.813(1)(g), F.S., requires that no more dredging be performed than is necessary to restore the dike or irrigation or drainage ditch~~,~~ to its original design specifications.

2. The entity claiming the maintenance exemption bears the burden of establishing that its activity qualifies for the exemption, including that the maintenance will not extend a system beyond its original design specifications or configuration. However, there is no requirement for the maintenance entity to provide advance notice to the Agency that they are planning on performing maintenance that qualifies for the exemptions in Sections 403.813(1)(f) or (g), F.S., except for the 30-day notice required for the maintenance dredging of previously dredged portions of natural water bodies.

   Maintenance entities are encouraged to notify the Agency of proposed maintenance and to discuss its planned scope and extent with the Agency. Maintenance entities may also request confirmation from the Agency that they qualify for an exemption. In the event that the planned activity does not qualify for an exemption, such consultation should help to avoid enforcement action by the Agency.

3. Direct evidence of original design can include: plans; historical aerial photographs; surveyed cross sections; soil boring reports, if such borings can distinguish between the original soils and the sediment deposited in a system; and other historical documents. Where such documentary evidence does not clearly

establish the original design, eyewitness accounts can be submitted to provide further evidence of the original design specifications or configuration. In addition, indirect evidence can be used. Indirect evidence is evidence from which the original design specifications or configuration can be scientifically deduced. Examples of such indirect evidence include historic information of land uses enabled by the system, and the sizes and capacities of associated systems, such as culverts or weirs. If the maintenance entity cannot reasonably establish the original design of a system, the maintenance exemptions in Sections 403.813(1)(f) and (g), F.S., are not applicable.

(b) The following limitations, conditions, and definitions also apply to the exemption in Section 403.813(1)(f), F.S., for maintenance dredging of existing: canals and channels, including navigation basins and ship's berths; intake and discharge structures; and previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements:

1. Spoil material must be deposited in a self-contained, upland spoil disposal site that will prevent the escape of spoil material into the waters of the state. For the purposes of the exemptions in Sections 403.813(1)(f) and (g), F.S., a self-contained, upland disposal site is a disposal site located entirely in uplands which is designed to prevent the spoil material from reentering waters of the state as defined in Section 403.031(13), F.S. Some examples of self-contained upland spoil disposal sites are:

   a. An upland area separated from waters of the state by a berm, such that the spoil material cannot reenter waters of the state;

   b. In a system that has an outer berm or dike, placing the spoil on the inner banks of the dike where it could potentially reenter those interior canals which are not waters of the state, and where the spoil material is prevented from being discharged to waters of the state through the operation of a pump or other type of water control structure; and

   c. In a system involving a road with roadside ditches that are waters of the state, placing spoil in a "V" shaped notch in the center of the road such that it could not be discharged to waters of the state.

   Additionally, use of dredged materials to conduct exempt or permitted maintenance of a dike or road shall not be considered spoil disposal, so long as the dredged materials are only used to restore the dike or road to original design specifications and the dredged material is not deposited into wetlands or other surface waters outside of the original dike or road cross section.

2. Best management practices for erosion and sediment control must be used at the dredge site to prevent bank erosion and scouring and to prevent turbidity, dredged material, and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This does not prevent the discharge of water during dredging or from the disposal site, as long as water quality standards are not violated in the receiving waters.

3. The maintenance dredging shall not cause significant impacts to previously undisturbed natural areas.

4. Maintenance work must be conducted in accordance with Section 379.2431(2)(d), F.S., which provides that, except as authorized by a permit issued under Section 379.2431(2)(c), F.S., or by the terms of a valid federal permit, the maintenance entity shall not at any time, by any means or in any manner intentionally or negligently:

   a. Annoy, molest, harass, or disturb or attempt to molest, harass, or disturb any manatee;

   b. Injure or harm or attempt to injure or harm any manatee;

   c. Capture or collect or attempt to capture or collect any manatee;

   d. Pursue, hunt, wound, or kill or attempt to pursue, hunt, wound, or kill any manatee; or

   e. Possess, literally or constructively, any manatee or any part of any manatee.

5. For canals and previously dredged portions of natural water bodies, the exemption only applies to such systems constructed prior to April 3, 1970, or constructed on or after April 3, 1970, pursuant to all necessary state permits.

6. The exemption does not apply to the removal of any natural or manmade barrier separating a canal or canal system from adjacent waters.

7. Maintenance dredging shall be limited to a depth of no more than five feet below mean low water for existing manmade canals or intake or discharge structures that have not been permitted for construction or maintenance dredging by DEP, the WMD, the Board of Trustees of the Internal Improvement Trust Fund, or the United States Army Corps of Engineers.

8. For maintenance dredging of a previously dredged portion of a natural water body, the maintenance entity must notify DEP at least 30 days prior to dredging, and provide documentation of original design specifications or configurations where such exist.

9. The term “natural water bodies” as used in paragraph 403.813(1)(f), F.S., means those surface water bodies extending waterward from the boundary established pursuant to the methodology in Chapter 62-340, F.A.C., except for those waters that were created solely due to human activity, such as borrow pits, ditches, canals, and artificial impoundments located in areas that were uplands prior to construction.

(c) The following limitations or conditions also apply to the exemption in Section 403.813(1)(g), F.S., for the maintenance of existing insect control structures, dikes, and irrigation and drainage ditches:

1. Spoil material must be deposited on a self-contained, upland spoil site that will prevent the escape of spoil material into waters of the state (see **paragraph 3.2.3(c)1, above,** for further explanation of self-contained, upland spoil site);

2. For insect control structures, if the Department of Health determines that the cost of new spoil disposal is so excessive that it will inhibit proposed insect control, then existing spoil sites or dikes may be used upon notification to DEP. In such cases, turbidity control devices shall be used when the receiving water body is a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish.

3.2.4 Seawall, Riprap, and other Shoreline Structure Restoration

Restoration and repair of a seawall, riprap revetment or other shoreline protection structure may be performed without a permit, under any of the following circumstances:

(a) The work qualifies as routine, custodial maintenance, as discussed in section 3.1.1, above.

(b) The work is authorized under a *de minimis* exemption, as explained in section 3.2.7, below.

(c) The work is authorized to be performed without a permit under an Emergency Order issued by the Governor and/or the Secretary of DEP or the Executive Director of a District following a large event, such as a hurricane.

(d) The work qualifies for an exemption under paragraph 62-330.051(12)(b), F.A.C., and Section 403.813(1)(e), F.S., which authorize restoration as long as no permit is required under Chapter 161, F.S., and the face of the restored structure is within 18 inches from the face of the old structure. Restoration under this exemption is limited to instances where the primary purpose of the project is restoration or replacement of an old or failing structure, and is not to expand or reclaim uplands. Generally, this exemption applies to situations in which:

1. The structure has been damaged or destroyed by a discrete event (such as a storm, accident, fire, or other unforeseen circumstance), typically of a localized nature within a period of no longer than one year of the event (which is normally a reasonable time to perform such restoration).

2. The restoration or repair is necessary due to degradation of materials over time, erosion (such as from currents or boat wakes), structural failures resulting from poor workmanship or design, or to upgrade materials or raise the height of the structure (such as to prevent overtopping by tides, waves, wakes, or flows). Restoration of structures that have deteriorated over long periods of time may require extensive work, such as backfilling, which may result in adverse individual or cumulative impact to the water resources. For this reason, the

following factors will be considered in determining whether the repair or restoration work is exempt, or needs a permit:

a. Whether the mean (or ordinary) high water line has shifted landward or waterward of the structure along more than 50 percent of its length (which may or may not run the entire length of the shoreline of the property);

b. The structural failure has persisted long enough for wetland or other aquatic communities to become established behind more than 10 percent of the length of the structure (excluding such communities that exist solely due to periodic overtopping by tides, waves or floods);

c. The damage or deterioration consists of more than minor cracks or gaps, (such as large sections of the structure that are failing, leaning, or completely missing), and the structure is no longer effectively retaining or stabilizing land; or

d. An excessive period of time has elapsed between when the degradation or failure became apparent and the time the repairs are proposed. Consideration will be given when extended time is needed due solely to circumstances beyond the control of the property owner, such as unavailability of contractors.

Furthermore, for the restoration work to qualify for this exemption, the structure must also be (or have been) legally in existence by virtue of:

1. Having been built under an applicable exemption or permit under Part IV of Chapter 373, F.S., or Part V of Chapter 403, F.S.; and was granted any applicable state-owned submerged lands authorization under Chapters 253 and 258, F.S.; or

2. Qualifying as being "grandfathered" (see section 3.1.2, above), such as having been built prior to permitting requirements under the above statutes.

3.2.5 Swales

Section 403.813(1)(j), F.S., exempts the construction and maintenance of swales. A swale is defined in Section 403.803(14), F.S., as a manmade trench that:

(a) Has a top width to depth ratio of the cross-section equal to or greater than 6:1, or side slopes equal to or greater than 3 feet horizontal to 1-foot vertical;

(b) Contains contiguous areas of standing or flowing water only following a rainfall event;

(c) Is planted with vegetation suitable for soil stabilization, stormwater treatment, and nutrient uptake; and

(d) Is designed to take into account the soil erodibility, soil percolation, slope, slope length, and drainage area so as to prevent erosion and reduce pollutant concentration of any discharge.

Applicants are advised that the construction of a swale system does not qualify for the exemption under Section 403.813(1)(j), F.S. A "swale system" is a stormwater management system that does not consist entirely of swales. An example is a subdivision served by swales as the primary stormwater management system, but that includes culverted driveway crossings and other pipe conveyance features. Such stormwater management systems must be designed and evaluated to address such things as potential impoundments and flood conveyance restrictions imposed by the culvert crossings and other pipe conveyance features. The entire stormwater management system as a whole must be designed, implemented, operated, and maintained to meet the conditions for issuance of Rule 62-330.301, F.A.C., the applicable Volume II, and the operation and maintenance requirements in **section 6.1.4** and **Part V of this Volume**.

3.2.6 Docks and Piers

Subparagraph 62-330.051(5)(b)4, F.A.C., pertains to the exemption in Section 403.813(1)(b), F.S. Section 403.813(1)(b)5, F.S., provides that the installation must be, ". . .the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot." This measurement begins where that portion of the structure (typically the access walkway or end of a marginal dock) connects to the shoreline (the landward extent of wetlands and other surface waters). From that point, there must be a minimum of 65 feet along the shoreline of the parcel or lot before reaching the point where the next access walkway or marginal dock connects to the shoreline of the same parcel or lot. The only exception is if the parcel of land or individual platted lot has less than 65 feet of shoreline. All waterward components of the dock (such as "T" ends, terminal platforms, walkways, finger piers, and boat shelters) must be separated from the waterward components of any other docks on the parcel or lot such that the docks cannot be reasonably be considered one structure. That test is met if there is enough separation between the docks that a person cannot access the next dock through more than extraordinary means (such as having to take a "running leap" or having to place temporary or permanent planks between the docks).

Applicants are advised that in addition to compliance with the regulatory exemption criteria, docks and piers located on state-owned submerged lands (SSL) are subject to the need to obtain a separate authorization, which will include consideration of such things as proximity and setbacks to riparian rights lines, the size of terminal platforms in aquatic preserves, whether the dock or pier includes any non-water dependent uses or activities, the total amount of preemption of state-owned submerged lands, the number of boat slips, the sufficient upland interest of the riparian upland owners, and any income-producing, revenue-generating uses of the dock or pier and associated uplands. See Chapters 18-18, 18-20, and 18-21, F.A.C., for additional information.

3.2.7 Other Exemptions

(a) Section 403.813(1), F.S., provides that no permit shall be required for certain activities under Chapters 373 and 403, F.S. These exemptions are listed in Rule 62-330.051, F.A.C.

(b) DEP has established additional exemptions by rule for minor activities that have been determined to have no more than minimal individual and cumulative impacts. They are contained in Rule 62-330.051, F.A.C.

(c) Section 373.406(6), F.S., provides that "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 Agencies 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 applicable Agency, and such activities shall not commence without a written determination from the Agency confirming qualification for the exemption. These are known as "*de minimis*" exemptions.

Applicants and permittees are advised that dewatering during construction may require a separate consumptive use permit from the applicable District, and potentially an NPDES permit.

3.3 Permits Required

Rule 62-330.020, F.A.C., describes activities that require a permit. The types of permits available are general permits, individual permits (which include mitigation bank permits), and conceptual approval permits. These are described below.

3.3.1 General Permits

General permits authorize activities specified in Rules 62-330.407 through 62-330.635, F.A.C.

To qualify, a person must submit notice to the Agency of intent to use a general permit following Rule 62-330.402, F.A.C., and **sections 4.2.2 of this Volume**. Activities that comply with all the general conditions of Rule 62-330.405, F.A.C., and the specific limitations and conditions for the particular general permit may be initiated 30 days after the Agency receives the notice, unless:

(a) The Agency responds within 30 days after receiving the notice that the activity does not qualify for the general permit, or that additional information is needed to determine if the activity qualifies for the general permit; or

(b) The conditions of the general permit require written verification from the Agency prior to initiating the activities.

Notices to use a general permit are not circulated to other parties for comment, but a copy of the notice is provided to the USACE for separate Department of the Army permit review when the activity does not qualify as "green" under the USACE SPGP (see **section 1.3.1.2 above**).

As discussed in **section 3.1.3**, above, the "10/2" general permit in Section 403.814(12), F.S., is not a general permit under Chapter 62-330, F.A.C.

3.3.2 Individual Permits

Except where a conceptual approval permit is sought, an individual permit under Rules 62-330.020 and 62-330.054, F.A.C., is required prior to the construction, alteration, operation, maintenance (excluding routine custodial maintenance), abandonment, or removal of projects that:

(a) Are not exempt in accordance with Rule 62-330.051 or 62-330.0511, F.A.C.;

(b) Exceed the permitting thresholds in subsection 62-330.020(2), F.A.C.;

(c) Do not qualify for a general permit under Rules 62-330.407 through 62-330.635, F.A.C.; and

(d) Do not qualify for the general permit in Section 403.814(12), F.S.

A mitigation bank permit is processed and evaluated as a type of individual permit, but also is processed and evaluated under the Mitigation Bank Permit rule, Chapter 62-342, F.A.C.

A conceptual approval permit is not a type of individual permit, but is processed in the same manner as an individual permit. It is evaluated under Rule 62-330.055 or 62-330.056, F.A.C., as applicable, the conditions for issuance in Rules 62-330.301 and 62-330.302, F.A.C., and the Applicant's Handbook Additional information on conceptual approval permits is contained in **section 3.4**, below.

Applications for individual permits undergo detailed site review and consideration of comments received during processing. Except as provided in Rule 62-330.054(4), F.A.C., an application for an individual permit shall be prepared and submitted following Rules 62-330.060 and 62-330.061, F.A.C., and **sections 4.2.3 and 4.4 below**, and processed following Rule 62-330.090, F.A.C., and **section 5.5, below.**

3.3.2.1 Dry Storage Facilities

An individual permit is required for the construction, alteration, operation, maintenance, abandonment, or removal of any dry storage facility for 10 or more vessels that is functionally associated with a boat launching area, including when the dry storage facility does not involve any work within the landward extent of wetlands and other surface waters (see Section 373.4132, F.S.). Such activities do not qualify for the "10/2" general permit in Section 403.814(12), F.S.

3.3.2.2 Alteration, Maintenance, and Operation

A permit is required prior to the alteration, maintenance, or operation of an existing project, including those previously constructed in conformance with an exemption or prior to the existence of state or federal permitting programs, if the alteration does not qualify for an exemption under Rule 62-330.051 or 62-330.0511, F.A.C., a general permit under Section 403.814(12), F.S., or the grandfathering provisions summarized in **section 3.1.2**, above.

"Alter" means "to extend a dam or works beyond maintenance in its original condition, including changes that may increase or diminish the flow or storage of surface water which may affect the safety of such dam or works" (see Section 373.403(7), F.S., and **paragraph 2.0(a)3**., above). Alterations that are subject to requiring a permit under Chapter 62-330, F.A.C., include:

(a) Addition to an existing system;

(b) Change of any part of an existing activity to capacities or locations different from those originally constructed; or

(c) Addition of, or changes to an existing project that will result in changes in the rate, volume, or timing of discharges; the point or points of discharge; increased pollutant loading; or that intrude into or otherwise adversely affect wetlands or other surface waters by activities such as rim ditching, draining, filling, or excavation.

"Maintenance," including repair, as defined in Section 373.403(8), F.S., and **paragraph** 2.0(a)58**.**, above, that does not constitute routine custodial maintenance is subject to the permitting requirements of Chapter 62-330, F.A.C. Routine custodial maintenance is exempt from permitting as discussed in **section 3.1.1, above**.

Except as provided in Chapter 62-330, F.A.C., or in a permit issued thereunder, the construction phase of an individual permit must be converted to an operation phase that extends in perpetuity after construction has been completed in conformance with the terms and conditions of the permit. The terms "operate" and "operation" are defined in **paragraph** 2.0(a)67, above. An application to construct or alter a project also constitutes a request for authorization to operate and maintain the project. General permits under Rules 62-330.407 through 62-330.635, F.A.C, automatically convert to the operation and maintenance phase upon completion of construction performed in compliance with the general permit. Additional information on operation and maintenance of projects is in Rule 62-330.310, F.A.C., and **Part V of this Volume.**

3.4 Conceptual Approval Permits

A conceptual approval permit is available, but not required, for activities occurring in phases or over a large land area. Conceptual approval permits are available under Rule 62-330.056, F.A.C., for any type of long-term build out other than for redevelopment or infill, and for redevelopment or infill under Rule 62-330.055, F.A.C. A conceptual approval permit does not authorize construction, alteration, maintenance, removal, or alteration (a separate individual permit is required for those activities). However, the first phase of construction can be authorized at the same time the conceptual approval permit is issued, as discussed below and in Rule 62-330.056, F.A.C. Construction of redevelopment or infill projects consistent with a conceptual approval permit issued under Rule 62-330.055, F.A.C., can be authorized through the general permit in Rule 62-330.450, F.A.C.

3.4.1 Issuance of a conceptual approval permit is a determination that conceptual plans are, within the extent of detail provided in the application, consistent with applicable rules at the time of issuance. A conceptual approval permit provides the permit holder with a rebuttable presumption that, during the duration of the conceptual approval permit, the design and environmental concepts upon which the conceptual approval permit is based (within the detail provided in the application) will meet applicable rule criteria for issuance of permits for subsequent phases of the project. This presumption is rebuttable at the time of receipt of a complete application to construct or operate future phases, dependent on the factors in subsection 62-330.056(7), F.A.C.

3.4.2 An application for a conceptual approval permit will be reviewed pursuant to the standards, criteria, and procedures for processing individual permits, together with the provisions of Rule 62-330.055 or 62-330.056, as applicable. The permit, if issued, will contain specific conditions

necessary to ensure that future applications for permits to construct, alter, operate, maintain, remove, or abandon projects can be issued only if such applications remain consistent with the conceptual approval permit.

3.4.3 Conceptual Approval for Urban Infill and Redevelopment

(a) A county or municipality may request a redevelopment conceptual approval permit under Rule 62-330.055, F.A.C., for urban redevelopment and infill within a community redevelopment area established by Part III of Chapter 163, F.S., or an urban infill and redevelopment area under Section 163.2517, F.S. Projects in compliance with the redevelopment conceptual approval permit can be constructed, operated, and maintained under the terms and conditions of the general permit in Rule 62-330.450, F.A.C.

(b) An application for redevelopment conceptual approval permit must contain a stormwater master plan developed in coordination with, and approved by, the Agency. The master plan must demonstrate that the urban redevelopment or infill project, as a whole, will provide a net improvement of the quality of stormwater discharge, as determined through a calculated reduction of annual loading of pollutants of concern as determined during the permit application review discharged after development, as compared to the predevelopment condition existing on the date of application for the conceptual permit. For areas that were demolished prior to the application, the predevelopment condition is considered to be the land use immediately previous to such demolition, as long as the immediate previous land use was in existence as of January 2009.

(c) If issued, the urban redevelopment or infill conceptual approval permit will include a ledger that indicates the target annual loading of the pollutants of concern (mass per acre) for each drainage basin within the area covered.

(d) A person wishing to construct or alter a project within the urban infill or redevelopment area may use the general permit in Rule 62-330.450, F.A.C., when the design meets the terms and conditions of that general permit. The general permit is available to all qualifying activities within the urban infill or redevelopment conceptual approval permit area. Construction under the general permit must occur within five years of the date qualification for its use is verified by the Agency for the specific activity subject to the general permit.

(e) Activities qualifying for the general permits will result in a debit to the master plan ledger of target pollutant loading within the drainage area affected. Once the entire pollutant load target is reached for the receiving waters, no more general permits under Rule 62-330.450, F.A.C., will be available for use under the terms of the issued urban infill or redevelopment conceptual approval permit. However, this does not preclude issuance of subsequent urban infill or redevelopment conceptual approval permits for which the general permit would be available.

3.4.4 The duration of a conceptual approval permit is discussed in **section 6.1.5**, below.

3.4.5 Modifications of conceptual approval permits and subsequently issued permits for construction, alteration, operation, maintenance, removal, or abandonment shall be in accordance with Rule 62-330.315, F.A.C.

3.4.6 Requests to extend the duration of a conceptual approval permit will be reviewed as provided in Rule 62-330.320, F.A.C.

4.0 Preparation and Submittal of Applications and Notices

4.1 Pre-application Conference

Applicants are encouraged to have a pre-application phone call, meeting (on-site or in the office), or other conference with the applicable Agency staff prior to submitting an application or notice. This should minimize processing steps and potential time delays by assisting the applicant to understand such things as:

(a) The need for a permit or potential qualification for an exemption or general permit;

(b) Which agency will be responsible for the review of the application or notice;

(c) How to prepare the application or notice, including availability of on-line tools that may assist in completing it;

(d) Information required by the Agency to evaluate an application or notice, including such things as wetland delineations, resources that may be affected, surface water data (such as for water quality, flooding, mean high water, and other surface water elevations), and other hydrologic, environmental, or water quality data;

(e) Application processing and evaluation procedures;

(f) The need for a pre-application on-site meeting;

(g) Adverse impacts that may prevent the proposed activity from meeting applicable permitting or review standards and criteria; and

(h) Measures that can be taken to reduce or eliminate adverse impacts, and the appropriateness of mitigation to offsite remaining adverse impacts.

See **Appendix A of this Volume** for Agency contact information.

4.2 Forms and Submittal Instructions

Where available, applicants are encouraged to use the e-Permitting and electronic portals of the Agencies to submit most applications and notices as discussed below. **Appendix C** of this Volume contains the Internet addresses of the Agencies.

4.2.1 Requesting an Exemption Determination

Except as noted below, notice to the Agency is **not required** to conduct an activity that qualifies for an exemption. The following are exceptions where prior notice to the Agency is required before conducting an exempt activity:

- Work proposed under Section 373.406(6), F.S., often called the "*de minimis"* exemption; this exemption is used for activities that are expected to have no more than minimal individual and cumulative impact, but are not authorized under a specific exemption or general permit adopted by rule. These activities must be reviewed on a case-by-case basis to determine qualification for the statutory exemption.

- Maintenance dredging within previously dredged portions of natural water bodies within drainage rights-of-way or drainage easements which have been recorded in the public records of the county, in accordance with Section 403.813(1)(f), F.S.

- The repair, stabilization, or paving of existing county maintained roads and the repair or replacement of bridges that are part of the roadway under Section 403.813(1)(t), F.S. However, that exemption has been superseded by the exemptions in subparagraphs 62-330.051(4)(d) and (4)(e), F.A.C., which do not require submittal of prior notice.

- Removal by an individual, residential property owner of organic detrital material from freshwater rivers or lakes that have a natural sand or rocky substrate and that are not located in an Aquatic Preserve, in accordance with Section 403.813(1)(u), F.S.

- The construction, operation, maintenance, alteration, abandonment, or removal of minor silvicultural surface water management systems under Rule 62-330.0511, F.A.C. The notice required by this exemption [Form 62-330.0511(1)] must be received by the Agency, but does not require verification of qualification by the Agency prior to commencement of the authorized activities.

A request for a written determination of qualification for an exemption shall follow Rule 62-330.050, F.A.C. Additional information on submitting a notice or letter requesting verification of an exemption is in **section 5.2**, below.

Many exempt activities involving construction and replacement of private docks, construction and restoration of private shoreline stabilization (seawalls and rip rap), installation and maintenance of boat ramps, and maintenance dredging of canals and channels qualify for the USACE SPGP discussed in **section 1.3.1.1**, above. If the activity does not qualify for the SPGP, a copy of the notice or letter will be forwarded to the USACE so it may begin processing any required permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Do not send a separate notice, letter or application to the USACE.

4.2.2 Preparing a Notice of Intent to Use a General Permit

Available general permits, including the specific limitations and conditions that apply to each are in Rules 62-330.407 through 62-330.635, F.A.C. General conditions applying to all general permits are in Rule 62-330.405, F.A.C.

Rule 62-330.402, F.A.C., contains the procedures to submit a notice of intent to use a general permit, and how it will be reviewed by the Agencies. Persons wishing to use a GP must complete Form 62-330.402(1), "Notice of Intent to Use an Environmental Resource General Permit." This form will provide the Agency with information needed to determine if the requested activity is on state-owned submerged lands and if the activity qualifies for the USACE SPGP (see **section 1.3.1.1**, above). The notice must include:

(a) A location map(s) of sufficient detail to allow someone who is unfamiliar with the site to travel to and locate the specific site of the activity;

(b) One set of construction plans, drawings, other supporting documents that depict and describe that the proposed activities qualify for the GP requested; and

(c) The fee required by Rule 62-330.071, F.A.C.

The notice may be submitted electronically or mailed to the Agency as provided in Rule 62-330.010, F.A.C. See **Appendix A** of this Volume for information on who to contact if you have any questions about whether the proposed activity may qualify for a GP, and **Section 4.2.2**, below, for additional information on submitting notices.

Effective July 1, 2012, the Florida Legislature established a general permit in Section 403.814(12), F.S., authorizing certain activities located entirely in uplands having a total project area of less than 10 acres and less than two acres of impervious surface. This is not a general permit under Chapter 62-330, F.A.C., and is not subject to the noticing and review provisions of that chapter. Additional information on that general permit is in **Section 3.1.3**, above.

4.2.3 Preparing an Application for an Individual or Conceptual Approval Permit

Except as provided in Rule 62-330.054(4), F.A.C., applications for individual and conceptual approval permits must be made on Form 62-330.060(1), "Joint Application for Environmental Resource Individual Permit / Authorization to Use State-Owned Submerged Lands / Federal Dredge and Fill Permit," available at: http://www.dep.state.fl.us/water/wetlands/erp/forms.htm or from the Internet site or office of any of the Agencies (see **Appendix A of this Volume**). It is designed so an applicant will need to complete only those sections applicable to the type of activity proposed. The form requests site and design information needed:

- To distribute, process, and evaluate whether the application meets the standards and criteria for issuance;

- To determine if the requested activity is on state-owned submerged lands, and whether it qualifies for any applicable authorization to use and occupy those lands; and

- By the USACE to obtain any required federal permit, including whether the activity qualifies for the USACE SPGP (see **Section 1.2.1.2, above**).

The submitted application must contain one original mailed or an electronic submittal of the materials requested in the applicable sections of the form, and such other information as is necessary to provide reasonable assurance that the activities proposed in the application meet the conditions for issuance under Rule 62-330.301, F.A.C., the additional conditions for issuance under Rule 62-330.302, F.A.C., and the applicable provisions of the Applicant's Handbook. Those materials include:

(a) Location maps of detail to allow someone who is unfamiliar with the site to travel to and locate the specific site of the activity;

(b) Construction plans, drawings, calculations, and other supporting documents that depict and describe the proposed activities;

(c) The applicable processing fee in accordance with Rule 62-330.071, F.A.C.;

(d) Documentation of the applicant's real property interest over the land upon which the activities subject to the application will be conducted. Interests in real property typically are evidenced by:

1. The applicant being the record title holder.

2. The applicant being the holder of a recorded easement conveying the right to utilize the property for a purpose consistent with the authorization requested in the permit application.

3. An entity having the right to exercise the power of eminent domain and condemnation authority, in which case the permit shall contain a provision that work cannot begin until proof of ownership is provided to the Agency.

4. An entity having a contract to purchase the real property included in the application, in which case the permit shall contain a provision that work cannot begin until proof of ownership is provided to the Agency.

5. A lessee of the property included in the application, provided at least one of the following exists:

   a. The record title owner is a co-applicant on the application.

   b. The applicant provides a copy of a written agreement with a governmental entity that states that the governmental entity agrees to accept the transfer of the permit if the lease is revoked, terminated or expires and that the governmental entity will accept the operation and maintenance phase of the permit. Documentation must be provided that the governmental entity has a recorded right of entry agreement or access easement to enter upon the property for these purposes.

   c. The applicant provides a recorded restrictive covenant or other recorded instrument demonstrating that the record title holder agrees to be responsible for the lease upon its revocation, termination or expiration. The record title holder must agree to be responsible for the permanent operation and maintenance of the system.

   d. Where the lease is on lands owned by the United States Government, the lessee shall:

      1] Provide a bond made payable to the Agency in an amount sufficient to construct the stormwater management system, or provide other measures suitable for ensuring that the stormwater management system can be completed, removed, or abandoned in the event the lessee, at any time, fails to or cannot complete construction of the system;

      2] Provide an agreement from a person in accordance with Part V of this Volume who agrees to be responsible for operation and maintenance of the system in the event the lessee, at any time, fails to or can no longer operate and maintain the system; or

3] Provide an easement or other legally-binding document from the landowner or other person with sufficient real property interest in the lands subject to the application giving the Agency and other persons who require right of entry for purposes of inspecting for compliance, monitoring, operating and maintaining, and completing construction as needed to comply with the permit, if issued.

6. Alternatives such as a recorded option agreement, a judgment of the court, or a certificate of title issued by a clerk of the court, that show that the person or entity has sufficient interest in, or control over, the property to construct, alter, operate, and maintain the project in accordance with Chapter 62-330, F.A.C. Except when it cannot reasonably be provided (such as when there is a court determination, or an inability to locate the record title holder), the recorded documentation shall indicate that the record title holder agrees to accept responsibility for the permit, is agreeable to accept the transfer of the permit, and that the Agency has third party enforcement rights to enforce the terms and conditions of the permit on the property.

7. Additional persons may be included as co-applicants, provided that one of the persons listed in 1. through 6., above is included as an applicant.

(e) Applications must be signed by an entity having sufficient real property interest over the land upon which the activities subject to the application will be conducted as described in section 4.2.3(d), above. The owner may designate an agent to provide materials in support of the application on the behalf of the owner. If the owner is a corporation, it must register and maintain active corporate status with the State of Florida as required by Section 607.0505(1)(a), F.S., and the person signing the application must have the legal authority to bind the corporation.

(f) Written authorization from the owner, lessee, or easement holder for staff of the Agency to enter onto, inspect, and conduct sampling or monitoring of the site that is subject to the application. If this is not possible, the applicant shall secure other means for staff to access the site in a manner that prevents trespass, and to demonstrate how the applicant will obtain approval from the entity having sufficient real property interest over the land subject to the application to perform the activities proposed prior to undertaking the work.

(g) Where an operating entity will be different from the permittee, written confirmation from the operating entity that they agree to accept responsibility for operation and maintenance of the activity as set forth in the permit, as further set forth in **section 12.3** of this Volume. This confirmation is not required at the time of application when the proposed operating entity has not yet been established, such as a property owner's association.

(h) Persons requesting to conduct activities on state-owned submerged land must submit satisfactory evidence of sufficient upland interest in accordance with paragraph 18-21.004(3)(b), F.A.C. (March 2, 2012), and are advised that necessary consent, lease, easement, or other form of authorization as required under the authority of Chapter 253 and, as applicable, Chapter 258, F.S., and the rules adopted thereunder, is required prior to initiating such work. In addition to demonstrating ownership or control in the land as

described above, the applicant also must demonstrate that they have the riparian rights to the state-owned submerged lands necessary to conduct the proposed activity.

For construction of docks and piers when satisfactory evidence of sufficient upland interest is not fee simple title, the applicant's interest must cover the entire shore of the adjacent upland fee simple parcel or 65 feet, whichever is less.

(i) A separate mangrove alteration or trimming permit under Sections 403.9321 through 403.9333, F.S., is not required when the mangrove trimming or alteration is authorized and conducted as part of and in conformance with a general or individual environmental resource permit, or when necessary to construct projects in conformance with an exemption or general permit under Chapter 62-330, F.A.C.

Submittal of the application is discussed in **section 4.4, below**.

4.2.3.1 Conceptual Approval Permits

An application for a conceptual approval permit shall be prepared and submitted in the same manner, and using the same form as an individual permit, as discussed in **section 4.2.3.**, above, except that the application shall be supplemented with the materials discussed in either Rule 62-330.055 or 62-330.056, F.A.C., as applicable.

4.2.3.2 Mitigation Bank Permits

An application for a mitigation bank permit shall be prepared and submitted in the same manner, and using the same form as an individual permit, as discussed in Section 4.2.3., above, except that the application shall be supplemented with the materials required in Chapter 62-342, F.A.C.

4.3 Processing Fees

Processing fees are required for the Agency to process each permit application, permit modification, petition, and submittal of requests to determine qualification for a general permit or exemption under Chapter 62-330, F.A.C. These fees must be submitted as prescribed by Rule 62-330.071, F.A.C. Additional information on the fees of the Agencies is in **Appendix D of this Volume**.

Processing fees are non-refundable except for the amount of any fees paid that exceed the amount specified for the application or notice under review, as specified above.

An application or notice submitted without the fee will not be considered complete; an Agency shall not be compelled to issue the requested permit, verify qualification for a general permit or exemption, or issue the requested petition until the complete processing fee is paid.

Additional information on processing fees associated with an applications and notices is in **sections 5.2.2 through 5.2.2.4, and 5.3.1 through 5.3.2.3, below**.

4.4 Submittal of Applications, Notices, and Petitions

All applications, notices, and petitions shall be submitted by mail or via e-permitting (where available) to the correct office of the applicable Agency (see **Appendix A of this Volume),** in accordance with the Operating Agreement or Delegation Agreement between the Agencies [see subsection 62-330.010(5), F.A.C.], except that:

(a) Submittal of an application or notice for a activity, a portion of which extends beyond the boundary of more than one District, is subject to Section 373.046(5), F.S. It provides that the responsible Agency will be determined based on factors such as the amount and geography of the activity's land area, the location of the activity's discharge or discharges, the type of activity, prior agency history, and the terms and conditions of the Operating Agreement in effect between the Agencies. In the case of activities that are the responsibility of DEP, the Director of the district office or Administrator of the Program processing the application shall have the authority to take the final agency action on the entire application.

(b) Applications, notices, and requests for activities that are within the geographic limits of a local government delegated responsibility for the ERP program under Chapter 62-344, F.A.C., shall be submitted to that local government or to the Agency in accordance with the terms of the Delegation Agreement with that local government incorporated by reference in Chapter 62-113, F.A.C. The text of those agreements may be viewed at http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm.

Paper and electronic copies of applications and~~,~~ notices must be filed during normal business hours with the Agency. Paper and electronic copies of applications or notices received after 5:00 PM (local time) of the office to which the submittal is made shall be deemed as filed as of 8:00 AM on the next regular business day. Electronic applications or notices to the NWFWMD are received at the District headquarters, which is in the Eastern time zone.

5.0 Processing of, and Agency Action on, Applications and Notices

5.1 General Procedures

The Agencies are required to follow procedural statutes and rules to review and act on applications and notices, and to provide rights to the public to object to Agency decisions: Chapter 120, F.S. (Florida Administrative Procedures Act), Chapters 28-101 through 28-110, F.A.C. (Uniform Rules of Procedure), and each Agency's adopted Exceptions to the Uniform Rules of Procedure. Additional specific provisions for processing applications and notices under Chapter 62-330, F.A.C., are summarized below.

Except as provided in subsection 62-330.054(4), F.A.C., individual and conceptual approval permits are processed using Rule 62-330.090, F.A.C., and **sections 5.5 through 5.5.5.3, below,** Those sections also address how components of an application that qualify for an exemption or general permit will be processed when they are included in an application for an individual permit.

5.2 Review of an Exemption Determination Request

Rule 62-330.050, F.A.C., and **section 4.2.1** above, describe how the Agencies evaluate whether an activity qualifies for an exemption. Persons are reminded that, except as noted in **section 4.2.1**, above, activities that qualify for an exemption may be conducted without formal review or action by the Agency.

5.3 Review of Request to Use a General Permit

5.3.1 General permits are granted by rule to authorize construction, operation, maintenance, alteration, abandonment, or removal of certain minor projects that have been determined to produce no more than minimal individual and cumulative impacts, provided:

(a) The activity is designed and implemented to meet the specific limits and conditions in the applicable general permit in Rules 62-330.407 through 62-330.635, F.A.C.

(b) The activity complies with all the general conditions in Rule 62-330.405, F.A.C.; and

(c) The person wishing to use a general permit submits to the Agency a completed Form 62-330.402(1), "Notice of Intent to Use an Environmental Resource General Permit", and as discussed in **section 4.2.2, above.**

5.3.2 Upon receipt, Agency staff will review the notice form to determine if it provides the information needed to demonstrate qualification for the general permit, including the processing fee required in Rule 62-330.071, F.A.C. If it does not qualify or contain all the required information, the Agency will mail a notification to the person within 30 days of receiving the notice form that the notice contains errors or omissions, or does not qualify for the requested general permit. If the Agency does not mail such notification within 30 days of receipt of the original or an amended notice to use the general permit, the person is authorized to conduct the activity authorized by the general permit, except where the general permit specifically requires Agency acknowledgement of qualification prior to proceeding with construction (see the general permits in Rules 62-330.410, 62-330.412, 62-330.417, 62-330.450, 62-330.475, and 62-330.630, F.A.C.)

5.3.3 The person submitting the notice form will have 60 days from the date of the Agency notification of non-qualification to correct the errors or deficiencies. An additional notice fee will not be required if the correct fee was originally submitted, and information correcting the errors or omissions are submitted to the Agency within the 60-day time limit.

5.3.4 If the person decides not to pursue the general permit and instead submits an application for an individual permit for the activity within 60 days of the Agency's notification of non-qualification for the general permit, the Agency will apply the fee submitted for the general permit to the application fee for the individual permit.

5.3.5 Within three business days of receipt of a general permit notice that does not qualify as "green" under the SPGP (see **section 1.3.1.2. above**), the Agency will send a copy of the notice form to the appropriate office of the USACE (unless specifically authorized by the USACE to do otherwise), and, for general permits under Rule 62-330.475, F.A.C., to the FWC.

5.3.6 Activities conducted under a general permit are certified to comply with applicable state water quality standards in Section 401, Public Law 92-500 and 33 USC Section 1341, and constitute a finding of consistency concurrence with the state's coastal zone management program

5.4 Publishing Notices of Exemptions and General Permits

The Agency will not publish in the newspaper, or require the person requesting qualification for an exemption or general permit, to publish, notice of receipt of the request, or of Agency action on the request. Persons who have requested to receive individual notice of receipt of pending permit applications also will not be directly provided with such notice or Agency action on exemptions and general permits.

Persons qualifying for an exemption or general permit are advised that interested parties who become aware of Agency action verifying or denying use of the exemption or general permit, or who observe work on the project within certain time frames without any prior notice, may have rights to petition for an administrative hearing under Chapter 120, F.S. For this reason, it may be in the best interest of the person proposing the activity to publish, at its expense, a one-time "Notice of Qualification for an Exemption" or "Notice of Qualification to Use a General Permit" in a newspaper of general circulation (under Section 50.031, F.S.) in the county where the activity is located. Agency staff can provide persons with the information for such a notice upon request. Persons who are substantially affected by the proposed action may petition for an administrative hearing within the time frames specified in the notice and Chapter 120, F.S.

5.5 Processing Individual and Conceptual Approval Permit Applications

5.5.1 Initial Receipt

Processing of an individual permit application, including an application for a conceptual approval or mitigation bank permit, commences upon receipt of the "Joint Application" (see **section 4.2.3**, above), submitted as described in Rule 62-330.060, F.A.C., and **section 4.4, above.**

5.5.2 Distribution of Applications and Notices to the Public Prior to Agency Action

Receipt of the "Joint Application" Form 62-330.060(1) by the Agency serves to initiate the application process for three separate authorizations:

(a) Application for an environmental resource permit. This will include distribution of all or parts of the application to interested parties and state agencies who have requested receipt of such application, or notice of its receipt;

(b) Application for a Department of the Army permit from the USACE under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899;

(c) Application to use state-owned submerged lands, when the activities appear to be located on, or have the potential to be located on, such lands.

5.5.2.1 Distribution to the USACE

A copy of the applicable sections of the "Joint Application" [Form 62-330.060(1)] will be sent by the Agency to the USACE when proposed activities are located in, on, or over wetlands or other surface waters but do not qualify for the USACE SPGP discussed in **section 1.3.1.2**, above. A separate application to the USACE is not required, and should not be sent to the USACE by the applicant unless specifically instructed to do so by the USACE. A separate USACE permit may be required for the activity, so applicants are advised not to begin any work until receiving any applicable permit from the USACE.

5.5.2.2 Distribution to Other Agencies

The applicable sections of the "Joint Application" will be distributed to certain state agencies with statutory authority under Florida's approved Coastal Zone Management Program within five working days of receipt of the application, including the Florida Fish and Wildlife Conservation Commission (FWC) and the Department of State, Division of Historical Resources. Those agencies may comment on the application as it is being processed, and may request additional information be provided to them so that they may fully evaluate the application. The Agencies shall consider comments that are timely received in the course of processing the application. As provided by Section 373.428, F.S., these agencies also may object to issuance of the project under the Coastal Zone Management Act. The applicant is not responsible for distributing the application to the above commenting agencies, but may be requested to supply information to them; the applicant is requested to always copy the processing Agency with any materials supplied to those other agencies in response to information related to the application.

5.5.2.3 Publishing Notice of Receipt of an Application for an Individual Permit

(a) Upon receipt by the District of an application for an individual permit to construct or alter a dam, impoundment, reservoir, or appurtenant work, it shall, cause a notice of receipt of the application to be published in a newspaper having general circulation (meeting the requirements of Section 50.031, F.S.) within the affected area in accordance with Sections 373.116, F.S., 373.118(3), 373.146, and 373.413(3), F.S. In addition, the District may also publish such notice on its website.

(b) When DEP processes the application, it may publish notice on its website if DEP determines that the activities are reasonably expected to result in a heightened public concern or likelihood of request for administrative proceedings. DEP will base that determination on the size, potential effect on the environment or the public, potential controversial nature, and the location of the activities.

(c) For applications processed by any Agency, the Agency will provide a notice of receipt of an application to any person who has filed a written request for notification of any pending applications affecting a designated area. Such notice will 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; a depiction of the proposed activity; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule. Such persons have certain rights to comment on or object to applications as they are being processed. Again, applicants are not responsible for performing this distribution.

Persons who wish to have their names placed on that mailing list may do so by contacting the local office of the Agency. A list of pending applications and their current status also may be viewed at http://tlhora6.dep.state.fl.us/www_pa/pa_statewide_count.asp (for DEP), or at the Internet site of the applicable District.

(d) When noticing is required under Section 253.115, F.S., for activities requiring a lease or easement in, on, or over state-owned submerged lands, the Agency, as staff to the Board of Trustees of the Internal Improvement Trust Fund, is required to provide notice of all property owners within a 500-foot radius of the proposed lease or easement boundary. In such a case, the applicant will be required to forward to the Agency a list of names and addresses from the latest county tax assessment roll in mailing label format. In lieu of the Agency providing notice of application for lease or easement, an applicant may elect to send the notice, provided the notice is sent by certified mail, with the return-receipt card addressed to DEP or District, as applicable.

5.5.3 Request for Additional Information

5.5.3.1 Within 30 days of receipt of the "Joint Application," (see **section 4.2.3., above**) for an individual or conceptual approval permit, and within 30 days of receipt of any additional information provided by the applicant in response to the Agency's timely request for information, the Agency will determine if it contains:

(a) The applicable information requested in Rule 62-330.060, F.A.C., and Sections A through H, as applicable, of the "Joint Application;"

(b) The fee required in Rule 62-330.071, F.A.C.;

(c) Information or exhibits needed to clearly and legibly depict and describe the proposed activity, and its location; and

(d) Any other additional information to provide the reasonable assurances needed by the Agency to determine if the proposed activity meets the conditions for issuance of a permit in accordance with Rules 63-330.301 and 62-330.302, F.A.C., and the Applicant's Handbook, as well as the information that may be required to concurrently process applications located on state-owned submerged lands in accordance with Rule 62-330.075, F.A.C. Applications for a conceptual approval permit also will be evaluated for the information required in either Rule 62-330.055 or 62-330.056, F.A.C., as applicable. Applications for a mitigation bank permit also will be evaluated for information required in Chapter 62-342, F.A.C.

The Agency may request only that information needed to clarify the additional information, or to answer new questions directly related to the additional information. The request will include citation to the rule that authorizes the Agency to request information on each item pursuant to Section 373.417, F.S.

The applicant may voluntarily submit a written waiver of the above 30-day time clock requirement to allow the Agency additional time to determine if additional information is required; the Agency is not obligated to accept the waiver or to delay sending the request for additional information.

5.5.3.2 An application will be considered incomplete if it does not include all the above items, or if it appears to contain conflicts or errors. If an agent completed the application on behalf of the applicant, the Agency will request any needed information from the agent, and will provide a copy of the request to the applicant. For purposes of the discussion that follows, the term "applicant" will also refer to the agent working on behalf of the applicant as identified in the application.

5.5.3.3 The Agency will inform the applicant within 30 days of receipt of the application, or within 30 days of receipt of additionally received information, whether the proposed activities are exempt from permitting or qualify for a general permit. Any processing fees received in excess of those required under Rule 62-330.071, F.A.C., will be refunded.

5.5.3.4 If an application contains a mixture of activities, one or more of which require an individual permit, and one or more of which are exempt from permitting or qualify for a general permit, all of the proposed activities will be considered together to be part of the application for an individual permit, and will be reviewed by the Agency as a whole, unless the applicant specifically requests in writing that the Agency determine which components of the entire application qualify for an exemption or general permit. In such a case, the applicant must separately pay the processing fee required under Rule 62-330.071, F.A.C., for the Agency to determine qualification for an exemption, a general permit, or both. If the application contains more than one type of activity qualifying for an exemption, or more than one type of activity qualifying for a general permit, only one exemption determination or general permit verification processing fee will be charged, as applicable.

5.5.3.5 The applicant shall have 90 days from the date the Agency makes a timely request for additional information to submit that information to the Agency. If an applicant requires more than 90 days to respond, it must notify the Agency in writing of the circumstances, at which time the application shall remain in active status for one additional period of up to 90 days. Additional extensions shall be granted for good cause shown by the applicant. A showing that the applicant is making a diligent effort to obtain the requested additional information, and that the additional time period is both reasonable and necessary to supply the information, shall constitute good cause. In such case, a specified amount of additional time shall be granted at the mutual consent of the Agency and the applicant. If the applicant chooses not to, or is unable to, respond to the request for additional information within the above time frames, the application shall be administratively denied without prejudice. An administrative denial is not a determination of the merit of an application and does not preclude the applicant from reapplying at a later time. However, the applicant will not receive a refund of processing fees submitted, and the Agency will not apply those processing fees to a subsequently submitted permit application or notice.

5.5.3.6 The applicant may submit a written request for an application be deemed complete at any time. Upon receipt of such request, the Agency will begin processing the application and will take

Agency action to issue or deny the application within 60 days of that date, or within such additional time as may be provided if the applicant voluntarily waives that time clock.

5.5.3.7 An applicant may voluntarily request the application be withdrawn prior to Agency action if the applicant does not or cannot provide the requested information or required processing fees within the above time frames. If the request for withdrawal of the application is filed prior to the Agency's denial, the applicant will not receive a refund of processing fees. However, if a new application or notice is received from the same applicant for an activity on all or a part of the same parcel within 365 days of the date the Agency received the request to withdraw the previous application, the Agency will apply processing fees submitted for such withdrawn application to the processing fees required for the new application or notice.

5.5.4 Staff Evaluation and Agency Action

5.5.4.1 Agency staff will commence the technical review when the application for an individual permit is complete. Criteria used in the evaluation will include Rules 62-330.075 (if the activity is located on state-owned submerged lands), 62-330.301 and 62-330.302, F.A.C., **Parts II through V of this Volume,** and **Volume II**, as applicable**.**

The decision to issue or deny a permit will be based on a determination of whether the reasonable assurances required in the above rules and the Handbook have been provided, including the provisions for elimination or reduction of adverse impacts to wetlands and other surface waters, and a determination of whether mitigation is appropriate to offset those adverse impacts.

5.5.4.2 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. By the 60-day deadline, or prior to the expiration of a timely filed waiver, the Agency will either issue a permit (or a Notice of Intent to Issue) if the activity meets the criteria in **section 5.5.4.1, above,** or it will issue a Notice of Denial (or Notice of Intent to Deny) if the activity does not meet the permitting criteria.

5.5.4.3 If the Agency determines that the applicant has not provided reasonable assurance that the proposed activity qualifies for issuance of an individual permit, the notice of denial (or notice of intended denial) will explain the basis for the denial, and what changes, in general terms, if any, would address the reasons for denial.

5.5.5 Notice of Agency Action

5.5.5.1 A person may request notice of the intended agency action for a specific application.

5.5.5.2 Interested persons, including objectors, may submit information about a proposed activity for Agency review. For Agency staff to properly evaluate the information, those persons are advised to contact the Agency within 14 days of notification if they have questions, objections, comments or information regarding the proposed activity. Persons who file a written request for further information regarding the permit application will be furnished the information in accordance with Section 119.07, F.S., and will be provided notice of the Agency decision.

5.5.5.3 For applications processed by DEP, it will provide notice of agency action to any person who has filed a written request to be notified of DEP's decision to issue or deny the permit, and to persons who have filed written objections or concerns about the activity. In addition, applicants will be

required to publish, at their expense, a one-time notice of the agency decision in a newspaper of general circulation (meeting the requirements of Section 50.031, F.S.) in the county where the activity is located if DEP determines the proposed activities are reasonably expected to result in a heightened public concern or likelihood of request for administrative proceedings. DEP will base that determination on the size, potential effect on the environment or the public, controversial nature, or location of the activities. DEP will furnish the applicant with the notice that is to be published. Notwithstanding DEP's intended agency action, such application shall be denied if the applicant either fails to publish notice, or to fails to provide proof of publication within 30 days of DEP's issuance of intended agency action, or within 21 days of the date of publication, whichever occurs sooner. In addition, DEP may also publish such notice on its website.

5.5.5.4 For applications processed by a District, the District shall provide notice of agency action or intended agency action to the applicant and to any persons who have requested to receive such notice. The District shall inform the applicant of the right to publish the Agency decision. The District may also publish such notice on its website.

5.5.5.4 The Notice of Intent to Issue, a permit (if there is no prior Intent to Issue), or a Notice of Denial (or Notice of Intent to Deny) provided by the Agency will include a notice of rights under Chapter 120, F.S., explaining the time limit for a person to file a petition for a formal administrative hearing.

5.5.5.5 Persons who have not been provided with notice of the Agency permit may have the right to petition for an administrative hearing on the activity under Chapter 120, F.S., until their point of entry closes. Therefore, even if not required to publish notice of the Agency's decision, it may be in the applicant's best interest to publish, at its own expense, a one-time notice of the Agency's decision (or intended decision) in a newspaper of general circulation in the county in which the activity is located. Agency staff will provide applicants with the information for publishing such a notice upon request.

5.6 Activities on State-owned Submerged Lands

Permit applications (as well as notices requesting qualification for an exemption or general permit) for activities on, or having the potential to be located on, state-owned submerged lands will be forwarded to DEP's Division of State Lands for a title determination. Applicants are not responsible for performing obtaining that determination. If a determination is made that the activity is located on state-owned submerged lands, a separate submerged lands authorization will be required in addition to any required environmental resource permit. The Agency will determine the form of authorization required, and whether such authorization can be approved, as part of the review of the application in accordance with Chapter 253, F.S., and 258, F.S., Chapters 18-18 or 18-20, F.A.C., as applicable, and Chapter 18-21, F.A.C. Processing of individual permit applications for activities on state-owned submerged lands are concurrently processed with the applicable state-owned submerged lands authorization, as described in **section 1.3.3 above**, Rule 62-330.075, F.A.C., and Section 373.427, F.S. For exemptions and general permits, the Agency will attempt to provide the state-owned submerged lands authorization at the same time as the decision to issue, deny, or verify the permit or notice under Chapter 62-330, F.A.C. If the state-owned submerged lands authorizations require execution of a document, such as a lease or easement, construction, alteration, maintenance, or removal of the project should not commence until that document is executed.

6.0 Duration, Operation, Modification, and Transfer of Permit

6.1 Duration of Permits

6.1.1 General

General, individual, and conceptual approval permits are issued with a specified construction phase, as provided in Rule 62-330.320, F.A.C. Upon completion of the construction that is compliant with the terms and conditions of the permit, the permit is then converted to a perpetual operation and maintenance phase. Conversion is either automatic or requires formal action by the Agency; the procedures for the conversion are described below and in Rule 62-330.310, F.A.C. A conceptual approval permit does not authorize construction or operation, but does have an expiration date that is tied to the issuance of subsequent permits for construction or alteration of the activities that are consistent with the conceptual approval permit, as discussed in Rule 62-330.055 and 62-330.056, F.A.C.

6.1.2 Construction Phase Duration

6.1.2.1 General Permits — The construction phase of a general permit is five years and cannot be extended. If construction activities have not been completed within that five year period, a new notice of intent to use the applicable general permit must be submitted, as provided in Rule 62-330.402, F.A.C., and **sections 5.3 through 5.3.6**, above.

6.1.2.2 Individual Permits — The construction phase of an individual permit typically is five years, but for good cause, may be authorized for a longer duration at the time of issuance of the permit, as described below and in subsection 62-330.320(2), F.A.C., an extension may be requested as a modification to the permit as described in Rule 62-330.315, F.A.C., and **sections 6.1.3 and 6.2**, below.

The construction phase of a permit expires on the date indicated in the permit unless an application is received for an extension of the construction phase prior to expiration of the permit.

If a construction phase is requested for a duration of more than five years, the applicant will be required to provide reasonable assurance that:

(a) The project cannot reasonably be expected to be completed within five years after commencement of construction; and

(b) The impacts of the activity, considering its nature, size, and any required mitigation, can be accurately assessed and offset where appropriate, and the terms of the permit can be met for the duration of the permit requested.

A mine is an example of a type of project where a construction phase of more than five years is typically requested; in many cases, mine resources are extracted over a period that may exceed 50 years.

6.1.2.3 A construction phase may include some incidental operation of constructed activities prior to formal conversion to an operation phase. For example, during construction of a stormwater management system, rainfall events may occur that will discharge stormwater runoff into the system under construction. At such times, the system may be temporarily operated prior to

formal conversion to the operation phase, provided such temporary operation does not violate the conditions for issuance of a permit in Rule 62-330.301 and 63-330.302, F.A.C. However, such constructed projects cannot be used for their intended use (such as occupation of a residence, commencement of business transactions for a business, public use of a road, or occupation of parking spaces by the general public within a parking lot) until the project, or the portions of the project that can be operated independently of other portions of the project have been completed and the Permittee has submitted Form 62-330.310(1) "As-Built Certification and Request for Conversion to Operation Phase," in accordance with subparagraph 62-330.350(1)(f)2., F.A.C., certifying as to such completion.

6.1.3 Request to Extend the Duration of the Construction Phase after Issuance

After issuance of an individual or conceptual approval permit, *but before the expiration date*, a permittee may request the duration of the permit be extended by sending a permit modification request (electronically or by mail) to the Agency that issued the permit in accordance with Rule 62-330.315, F.A.C., and section **6.2**, below.

If a timely and complete request is received to extend the construction phase of an individual permit, or the duration of a conceptual approval permit, the existing permit shall remain in full force and effect until the Agency takes action on the request for extension. If the request is denied, the permit shall not expire until the last day for requesting review of the Agency order.

6.1.4 Operation and Maintenance Phase

The procedures and requirements for converting a permit from the construction phase to the operation and maintenance phase are provided in Rule 62-330.310, F.A.C., the general and special limiting condition in paragraph 62-330.350(1)(g), F.A.C., and **sections 12.1 through 12.2 of this Volume.**

The operation and maintenance phase of all ERP permits lasts in perpetuity.

6.1.5 Conceptual Approval Permits

The duration of conceptual approval permits is:

The maximum duration of a conceptual approval permit, other than for urban infill and redevelopment, is 20 years, or as otherwise provided in subsection 62-330.056(9), F.A.C. Such conceptual approval permit will expire in five years if construction does not begin within five years of issuance (see subsection 62-330.056(10), F.A.C.).

For urban infill and redevelopment — 20 years, as specified in subsection 62-330.055(5), F.A.C.

6.2 Modification of Permits

The permittee may request a modification to an existing, currently valid individual or conceptual approval permit in accordance with Rule 62-330.315, F.A.C., and as summarized below. Changes to activities authorized by a general permit require submittal of a new notice (if the changes result in the project still qualifying for a general permit), or submittal of a new application for an individual permit if the changes cause the activity to exceed the limitations and conditions of the general permit.

6.2.1 Applications for modifications are processed as either minor or major in accordance with Rule 62-330.315, F.A.C.

(a) Applications for minor modifications, as described in Rule 62-330.315, F.A.C., other than to modify the permit to reflect a change in ownership or control of the land subject to the permit, may be requested electronically or by letter sent to the Agency that processed the permit. The request must include:

1. Reference to the permittee name and permit number;

2. Contact information for the requestor;

3. A clear statement explaining the nature of the proposed modification

4. Fully dimensioned or scaled drawings reflecting the proposed modification, if applicable.

(b) A modification request to transfer the permit is considered a minor modification, and shall be made in accordance with Rule 62-330.340, F.A.C., except when the transfer is to an operation and maintenance entity approved at the time of issuance of the permit.

(c) A request that does not qualify as a minor modification is processed as a major modification in accordance with subsection 62-330.315(3), F.A.C.

(d) Factors that will be considered in determining whether a modification will cause more than minor changes under subsection 62-330.315(2), F.A.C., are whether the proposed activity will:

1. Increase the project area by more than 10 percent or 1 acre, whichever is less, unless the activities were permitted with stormwater treatment and flood attenuation capability sufficient to meet the permitting requirements for the proposed modification, or unless the increase in project area is to a mitigation bank, in which case any increase in the project area is considered a major modification;

2. Increase proposed impervious and semi-impervious surfaces by more than 10 percent or 0.5 acres, whichever is less, unless the activities were permitted with stormwater treatment and flood attenuation capability sufficient to meet the permitting requirements for the proposed modification;

3. Reduce the stormwater treatment or flood attenuation capability of the system, unless the activities were permitted with stormwater treatment and flood attenuation capability sufficient to meet the permitting requirements for the proposed modification;

4. Result in additional loss of permitted floodplain storage within the 10-year floodplain at a location where the upstream drainage area is greater than 5 square miles;

5. Result in additional unmitigated impacts to wetlands or other surface waters, unless mitigation is not required pursuant to **section 10.2.2.1 or 10.2.2.2**, below;

6. Result in more than 10 percent or 0.5 acre, whichever is less, of total additional mitigated impacts to wetlands and other surface waters;

7. Result in any additional impacts within a designated riparian habitat protection zone;

8. Cause or contribute to water quality violations that were not anticipated in the issued permit;

9. Reduce the permitted financial responsibility mechanisms, except in accordance with specific permit conditions that provide for a reduction in such financial responsibility mechanisms;

10. Result in a net reduction in the area of conservation easement or mitigation within the area which was previously permitted;

11. Extend the duration of a permit beyond a one-time extension of five years from the date of approval of the modification request;

12. Require a new site inspection;

13. Lead to substantially different impacts to the water resources or overall objectives of the District or Department, unless they lessen the impacts of the original permit; or

14. Otherwise substantially alter the design of the activities or the permit conditions.

(e) All modification requests must include payment of the processing fee under Rule 62-330.071, F.A.C.

6.3 Transfers of Permits and Ownership

6.3.1 General permits

Projects constructed in accordance with the terms and conditions of a general permit are automatically authorized to be operated and maintained by the permittee and subsequent owners in accordance with subsection 62-330.310(1), F.A.C., and do not require a modification request to the Agency upon change in ownership.

6.3.2 Individual and Conceptual Approval Permits

6.3.2.1 A modification to an individual or conceptual approval permit is required to reflect any sale, conveyance, or other transfer of a permit, or of any transfer of ownership or control of the real property at which the permitted activity is located, except for transfer to the operation and maintenance entity approved in the permit. Ownership must be demonstrated in accordance with **sections 4.2.3(d) and (e), above.**

6.3.2.2 Transfer of ownership of an entire real property, that contains the project authorized in a permit that is in the operation and maintenance phase is automatic if the permittee provides the agency with

written notice within 30 days of the change in ownership or control. See subsection 62-330.340(1), F.A.C.

6.3.2.3 Other than those transfers described in subsection 62-330.340(1), F.A.C.**,** the Agency must be notified in writing, and a permit modification must be processed under Rule 62-330.315, F.A.C., and subsections 62-330.340(2) through (4), F.A.C. for any change.

A request to transfer a portion of a permitted system shall also include demonstration that either the portion of the project is capable of functioning independently in compliance with all conditions for permit issuance, or that the transferee has sufficient legal and ownership interest (such as drainage easements, cross drainage agreements or other agreements) to allow the transferee to operate and maintain a portion of a connected system.

6.4 Removal and Abandonment

An owner of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works wishing to abandon or remove such project is subject to the provisions of Section 373.426, F.S.

7.0 Determinations of the Landward Extent of Wetlands and Other Surface Waters

7.1 Methodology

Determinations of the landward extent of wetlands and other surface waters shall be performed using Chapter 62-340, F.A.C., as ratified under Section 373.4211, F.S. Two types of determinations are available:

(a) A formal, certified survey, an approximate delineation, or a combination thereof, as discussed in **sections 7.2 through 7.2.7**, below; and

(b) An informal, as discussed in **section 7.3**, below.

7.2 Formal Determinations

Petitions for formal determinations shall be prepared following the requirements below**,** and submitted to the applicable Agency in accordance with the Operating Agreements incorporated by reference in subsection 62-330.010(5), F.A.C.

7.2.1 Preparation and Submittal of the Petition

The petition shall contain:

(a) One copy of completed Form 62-330.201(1), "Petition for a Formal Determination of the Landward Extent of Wetlands and Other Surface Waters," including copies of all items required by that form; and

(b) The processing fee required in Rule 62-330.071, F.A.C.

(c) The petition shall be submitted to the Agency office that will have permitting responsibility for the types of activities proposed for the lands subject to the Determination, in accordance with the Operating Agreements incorporated by reference in Chapter 62-113, F.A.C.

7.2.2 Processing the Petition

(a) Within 30 days of receipt of a petition for a formal determination of the landward extent of wetlands and other surface waters, and within 30 days of receipt of any additional information submitted by the petitioner in accordance with this subsection, the Agency shall notify the petitioner of any additional information which may be necessary to complete the review of the petition. The petitioner shall have 120 days from the date the Agency mails a timely request for additional information to submit that information to the Agency. If a petitioner requires more than 120 days in which to respond to a request for additional information, the petitioner may notify the Agency in writing of the circumstances, at which time the petition shall be held in active status for one additional period of up to 120 days, if approved by the Agency. Additional extensions shall be granted by the reviewing Agency for good cause shown by the petitioner. A showing that the petitioner is making a diligent effort to obtain the requested additional information shall constitute good cause. Failure of a petitioner to provide the timely requested

information by the applicable deadline shall result in administrative denial of the petition without prejudice to re-apply.

1. For petitions processed by DEP, it will complete the determination and issue a notice of intended agency action within 60 days after the petition is deemed complete. The petitioner shall publish, at its own expense, the notice of proposed agency action in a newspaper of general circulation in the affected area. The petitioner shall provide a copy of the proof of publication of the notice of intended agency action to DEP using the format prescribed in subsection 62-110.106(5), F.A.C. The Agency shall send the property owner a copy of the Agency determination if the owner is not the petitioner.

2. For petitions processed by a District, the District shall complete the determination and shall issue a notice of intended agency action within 60 days after the petition is deemed complete. The petitioner may publish, at its own expense, the notice of proposed agency action in a newspaper of general circulation in the affected area. If published, the petitioner shall provide a copy of the proof of publication of the notice of intended agency action to the District. The District shall send the property owner a copy of the Agency determination if the owner is not the petitioner.

(b) The petition shall be denied if the Agency determines that the materials submitted to the reviewing agency do not contain all the applicable information required in this subsection, including if the petitioner does not correctly delineate the landward extent of wetlands and other surface waters in accordance with Chapter 62-340, F.A.C. The Agency shall complete the determination and shall issue a notice of intended agency action within 60 days after the petition is deemed complete unless the petitioner provides the reviewing agency with a written waiver of this time limit. A person requesting a formal determination may withdraw the petition without prejudice at any point before final agency action.

(c) Sections 120.569 or 120.57, F.S., apply to formal determination decisions made by the Agency. Any person whose substantial interests will be affected by the Agency's proposed action on the petition may request an administrative hearing in accordance with subsection 62-330.010(7), F.A.C.

(d) Prior to the Agency's inspection of real property that is 10 acres or greater in size, the petitioner or its agent shall initially delineate the boundaries of wetlands and other surface waters on the site either by flagging the field locations of wetland and other surface water boundaries (for a certified survey or a global positioning system [GPS] approximate delineation), or by estimating the extent of wetland and other surface water boundaries on aerial photographs (for an aerial approximate delineation). An Agency representative will then verify the location of the wetland and other surface water boundaries and indicate any necessary adjustments of the petitioner's initial determination to reflect an accurate delineation. When the real property is less than 10 acres, the petitioner may elect to not pre-flag for verification, in which case the reviewing Agency will flag the wetland and other surface water boundaries during its inspection of the site. Inspection boundaries must be clearly marked and easily discernible in the field.

(e) A petitioner may request a formal determination in the form of a certified survey, an approximate delineation, or combinations thereof, as described below.

1. When a certified surveyed delineation of the extent of wetlands and other surface waters is used, the survey shall be prepared and certified by a Professional Surveyor and Mapper registered in the State of Florida. The surveyor or the surveyor's representative shall accompany the Agency representative on the delineation verification described in section **7.2.2(f)**, below, and shall have the surveyor survey the verified boundaries of wetlands and other surface waters. The certified survey shall include a legal description of, and acreage contained within, and depict the boundaries of the property for which the determination is sought. The boundaries of wetlands and other surface waters must be witnessed to the property boundaries, and shall be capable of being mathematically reproduced from the survey. If submitted by mail, the petitioner must submit to the Agency five copies (when the verification is to be performed by DEP) or three copies (when the verification is to be performed by the District) of the certified survey, along with five copies of the survey depicted on aerial photographs to complete the petition. When documents are submitted electronically, only one electronic copy is required.

2. When an approximate delineation is used, it shall consist of a depiction of the approximate boundary of wetlands and other surface waters produced by using a GPS, or the boundary of wetlands and other surface waters drawn on rectified aerial photographs, or a combination thereof. The approximate delineation shall be subject to the following:

    a. A range of variability shall be determined for all depictions of approximate wetland and other surface water boundaries by comparing a number of field located flagged points of the delineated wetland and other surface water points field delineated by GPS, to field located and surveyed boundary points. The Agency shall determine the number and location of comparison points using the total linear feet of approximately delineated wetland and other surface water boundaries such that the total number of comparison points reflects at least one specific surveyed comparison point for every 1,000 feet of approximately depicted wetland and other surface water boundary. No fewer than three comparison points shall be performed for each approximate delineation. For GPS approximate delineations, the petitioner shall provide a survey prepared and certified by a Professional Surveyor and Mapper registered in the State of Florida, to show the relationship of surveyed comparison points to the GPS depicted wetland and other surface water boundaries. The range of variability shall be the greatest deviation measured at the surveyed comparison points. An approximate GPS depiction of wetland and other surface water boundaries cannot be used if the range of variability is equal to or greater than 25 feet.

    b. A range of variability shall be determined for all approximate wetland and other surface water boundaries hand drawn on aerial photographs by comparing a number of specific wetland and other surface water boundary points indicated on the rectified aerial photograph, to field located and surveyed boundary points. The Agency shall determine the number and location of comparison points using the total linear feet of approximately delineated wetland and other surface water boundary such

that the total number of comparison points reflects at least one specific surveyed comparison point for every 1,000 feet of approximately delineated wetland and other surface water boundary. No fewer than three comparison points shall be performed for each approximate delineation. For approximate wetland and other surface water boundaries hand drawn on an aerial photograph, the petitioner shall provide a specific purpose survey prepared and certified by a Professional Surveyor and Mapper registered in the State of Florida, to show the relationship of surveyed comparison wetland and other surface water boundary points to the aerial photo-interpreted wetland and other surface water boundary points. The range of variability shall be the greatest deviation measured at the surveyed comparison points. An approximate hand-drawn aerial photograph delineation method cannot be used if the range of variability is equal to or greater than 25 feet.

c. A rectified aerial photograph shall serve as the basis for an approximate delineation hand-drawn on aerial photographs only when the boundaries of wetlands and other surface waters are accurately depicted on the aerial photograph by the clear expression of vegetative or physical signatures of the vegetative communities as verified by ground-truthing. If a submitted rectified aerial photograph does not provide a clear expression of vegetative or physical signatures of the vegetative communities or other surface water features on the property, or cannot be accurately depicted, then the landward extent of wetlands and other surface waters shall be delineated by flagging the boundary, and the formal determination shall be produced using the procedure for a certified survey described above in section 7.2.2(e)1; or by depiction of the approximate wetland and other surface water boundaries field delineated by GPS as described above in section 7.2.2(e)2.a., or a combination thereof.

d. After any verification and adjustment as required in section **7.2.2(f)**, below, the petitioner shall submit five copies (when the verification is to be performed by DEP) or three copies (when the verification is to be performed by the District) of the following to complete the petition: the hand-drawn wetland and other surface water boundaries on a rectified aerial photograph; or a depiction of the approximate wetlands and other surface waters field-delineated by GPS on a rectified aerial photograph, along with five copies (when the verification is to be performed by DEP) or three copies (when the verification is to be performed by the District) of a survey prepared and certified by a Professional Surveyor and Mapper registered in the State of Florida, to show the relationship of field located surveyed comparison points to the approximate field GPS boundary points or the wetlands and other surface waters boundary drawn on a rectified aerial photograph. When documents are submitted electronically, where the Agency has provisions for accepting electronic copies, only one electronic copy is required.

e. As a condition of an approximate formal determination, when a subsequent permit application includes regulated activities within 200 feet of the landward extent of the approximate delineation, the applicant

shall field-establish and flag or stake the exact wetlands and other surface waters boundaries pursuant to Chapter 62-340, F.A.C., at that location for verification by the reviewing Agency. The purpose of the flagging or staking is to identify the line to minimize the potential for unintentional disturbance of the wetlands or other surface waters. If the regulated activities are in such proximity to the field-established line that it is necessary for the Agency to require the field-established line to be documented as part of the permit application or formal determination, or if required as part of accepting a site-protection instrument proposed by the applicant, the line as field-verified by the reviewing Agency shall be located by a surveyor or mapper registered in the State of Florida. The field-established line does not need to be documented when any of the following exist:

(1) The project will involve dredging or filling of all an individual wetland or other surface water encompassed by the approximate delineation. If only a portion of the wetlands or other surface waters at that location is proposed for dredging or filling, the need to stake or flag the field-established line or the proposed limits of dredging or filling will be determined by the Agency during processing of the permit application based on factors such as those in 2 through 4 below.

(2) The precise location of the wetland or other surface water boundary is not needed to demonstrate compliance with section 10.2.7 of Volume I.

(3) The applicant proposes to impact a particular entire wetland or surface water, and the impact meets the requirements of section 10.2.1 of Volume I.

(4) Flagging or staking of the field-established line will not materially affect whether the project impacts can be determined by relying on the approximate delineation.

(f) Prior to the Agency's inspection of the site the petitioner or their agent shall submit to the reviewing agency a depiction of the delineation of wetlands and other surface waters by either flagging the wetlands and other surface waters boundary for a certified survey or for a GPS approximate field delineation, or by estimating the wetlands and other surface waters extent of wetlands and other surface waters on aerial photographs. An Agency representative will then verify the location of the wetlands and other surface waters boundary line and indicate any necessary adjustments of the petitioner's initial determination to reflect an accurate delineation.

7.2.3 Duration.

A formal determination shall be binding for five years provided physical conditions on the property do not change, other than changes that have been authorized by a permit issued under Part IV, Chapter 373, F.S., so as to alter the boundaries of delineated wetlands or other surface waters during that period.

7.2.4 Renewal of Determination. A petition for a new formal determination for a property for which a formal determination issued pursuant to this rule already exists shall qualify for a reduced processing fee under Rule 62-330.071, F.A.C., provided:

(a) Physical conditions on the property have not altered the boundaries of wetlands or other surface waters during the period of the existing determination, other than changes that have been authorized by a permit issued under Part IV of Chapter 373, F.S.;

(b) The petition is submitted 60 days prior to the expiration of the existing determination; and

(c) The methodology in Chapter 62-340, F.A.C., has not been amended since the previous formal determination.

7.2.5 Revocation of Determination. The Agency shall revoke a formal determination upon finding that the petitioner has submitted inaccurate information to the Agency such that a substantially different delineation of the boundaries of wetlands or other surface waters would have resulted if the correct information had been submitted (see Section 373.421(4), F.S.).

7.2.5 A formal determination issued to a real property owner or other person who has a legal or equitable interest in real property may be transferred to a successor in interest to the party who originally petitioned for the determination. The transfer shall be subject to the existing terms and conditions of the original determination.

7.2.6 A copy of the issued formal determination, along with the certified survey depicting the approved wetlands and other surface waters boundaries, shall be sent to the appropriate USACE office and to DEP or the District, as appropriate.

7.2.7 Where a petition for a formal determination is requested for lands subject to a violation of Part IV of Chapter 373, F.S., the extent of wetlands and other surface waters will be evaluated as if the violation or non-compliance issue had not occurred.

7.3 Informal Determinations.

The Agency may issue informal, non-binding pre-application determinations of the landward extent of wetlands and other surface waters, or otherwise perform non-binding determinations on its own initiative, as Agency staff time and resources allow. Applicants are strongly advised to contact Agency staff prior to requesting an informal determination, as staff resources to perform these determinations are very limited.

Informal determinations are provided as a public service, and are available only to 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 parcel of property.

A request for an informal determination requires payment of the fee in Rule 62-330.071, F.A.C., but:

(a) Is not an application for a permit;

(b) Is not subject to the processing review timeframes in Chapter 120 or 373, F.S.

(c) If issued, does not constitute final agency action;

(d) Is subject to change, and does not bind the Agency, nor does it convey any legal rights, expressed or implied. Persons obtaining an informal pre-application determination are not entitled to rely upon it for purposes of compliance with law or Agency rules; and

(e) An inability of the Agency to perform an informal determination also does not constitute a default of agency action.

PART II -- CRITERIA FOR EVALUATION

8.0 Criteria for Evaluation

8.1 Purpose

The criteria explained in this part are those that have been adopted by the Agency in evaluating applications for individual and conceptual approval permits, with the exception of those individual permits described in Rule 62-330.054(4), F.A.C. The staff recommendation to approve any individual or conceptual approval permit will be based upon a determination of whether reasonable assurance has been provided that the activity meets the criteria for evaluation, and whether the applicable permit fee has been submitted.

General permits are pre-issued, and already contain the limitations and criteria that must be met to qualify to use the specific general permit. Upon receipt of a notice to use a general permit, the Agency's review is limited to determining whether the notice complies with the terms and conditions of the pre-issued permit, in accordance with Chapter 62-330, F.A.C., and whether the applicable permit fee has been submitted.

8.2 Criteria for Evaluation

8.2.1 To obtain an individual or conceptual approval permit, an applicant must give reasonable assurance that the following major standards contained in Sections 373.042, .413, .414, .416, .426, .429, .4595, F.S., are met:

(a) The construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works will not be harmful to the water resources of the District or Department;

(b) The operation or maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works will not be inconsistent with the overall objectives of the District or Department and will not be harmful to the water resources of the District or Department;

(c) The abandonment or removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will not be inconsistent with the overall objectives of the District or Department; and

(d) Compliance with applicable additional basin criteria will not be inconsistent with the overall objectives of the District or Department.

8.2.2 All Individual and Conceptual Approval Permits

Generally, to obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of a project will meet the Conditions for Issuance in Rule 62-330.301, F.A.C., the applicable Additional Conditions for Issuance in Rule 62-330.302, F.A.C., and the requirements of this Volume, and the applicable parts of Volume II.

However, when an activity requires an individual permit solely pursuant to section 1.2.3 of Volume II for the SJRWMD, the permit application for such activity shall be reviewed and acted upon in accordance with that section.

8.2.3 Activities Discharging into Waters That Do Not Meet Standards

In instances where an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, and the activity will cause or contribute to this existing condition, mitigation for water quality impacts can consist of water quality enhancement that achieves a net improvement. In these cases, the applicant must propose and agree to implement mitigation measures that will cause net improvement of the water quality in the receiving waters for those contributed parameters that do not meet water quality standards.

8.2.4 Flood Damage

Activities shall not cause adverse flooding. Information on design and performance standards to avoid and minimize flood damage is contained in Volume II specific to the geographic area covered by each District.

8.2.5 Storage and Conveyance

Floodways and floodplains, and levels of flood flows or velocities of adjacent streams, impoundments or other water courses must not be altered so as to adversely impact the off-site storage and conveyance capabilities of the water resource. Projects that alter existing conveyance systems (such as by rerouting an existing ditch) must not adversely affect existing conveyance capabilities. Also, the applicant shall provide reasonable assurance that proposed velocities are non-erosive or that erosion control measures (such as riprap and concrete lined channels) are sufficient to safely convey the flow. Information on design and performance standards to achieve storage and conveyance requirements are in Volume II specific to the geographic area covered by each District.

8.2.6 Low Flow and Base Flow Maintenance

Flows of adjacent streams, impoundments, or other watercourses must not be decreased so as to cause adverse impacts. Information on design and performance standards to achieve low flow and base flow maintenance requirements are contained in Volume II specific to the geographical area covered by each District.

8.3 State Water Quality Standards

8.3.1 Surface Water Quality Standards

State surface water quality standards are set forth in Chapters 62-4 and 62-302, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and the special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C.

8.3.2 Ground Water Quality Standards

State water quality standards for ground water are set forth in Chapter 62-520, F.A.C. In addition to the minimum criteria, Class G-I and G-II ground water must meet primary and secondary drinking water quality standards for public water systems, which are established pursuant to the Florida Safe Drinking Water Act, Sections 403.850 through 403.864, F.S., and are listed in Rules 62-550.310 and 62-550.320, F.A.C.

Only the minimum criteria apply within a zone of discharge, as determined in Rule 62-520.400**,** F.A.C.

8.3.3 How Standards are Applied

The quality of waters discharged to receiving waters is presumed to meet the surface water quality standards in Chapter 62-302, F.A.C., and Rule 62-4.242 and 62-4.244, F.A.C., and the ground water standards in Chapter 62-520, F.A.C., if a project is permitted, constructed, operated, and maintained in accordance with Chapter 62-330, F.A.C., this Volume, and the applicable parts of Volume II.

9.0 RESERVED

PART III – ENVIRONMENTAL

10.0 Environmental Considerations

10.1 Wetlands and other surface waters

Wetlands are important components of the water resources in the state because they often serve as spawning, nursery and feeding habitats for many species of fish and wildlife, and because they often provide important flood storage, nutrient cycling, detrital production, recreational and water quality functions. Other surface waters such as lakes, ponds, reservoirs, other impoundments, streams, rivers and estuaries also provide such functions, and in addition may provide flood conveyance, navigation, recreation, and water supply functions to the public. Not all wetlands or other surface waters provide all of these functions, nor do they provide them to the same extent. A wide array of biological, physical and chemical factors affect the functioning of any wetland or other surface water community. Maintenance of water quality standards in applicable wetlands and other surface waters is critical to their ability to provide many of these functions. It is the intent of the Agency that the criteria in **sections 10.2 through 10.3.8, below,** be implemented in a manner that achieves a programmatic goal, and a project permitting goal, of no net loss in wetland or other surface water functions. This goal shall not include projects that are exempt by statute or rule, or that are authorized by a general permit. Unless exempted by statute or rule, permits are required for the construction, alteration, operation, maintenance, abandonment and removal of projects so that the Agency can conserve the beneficial functions of these communities. The term "project" includes areas of dredging or filling, as those terms are defined in Sections 373.403(13) and 373.403(14), F.S.

10.1.1 Environmental Conditions for Issuance

The Agency addresses the conservation of these beneficial functions in the permitting process by requiring applicants to provide reasonable assurances that the following conditions for issuance of permits, set forth in Rules 62-330.301 (Conditions for Issuance) and 62-330.302 (Additional Conditions for Issuance), F.A.C., are met. Applicants must provide reasonable assurance that:

(a) A regulated activity will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters [paragraph 62-330.301(1)(d), F.A.C.];

(b) A regulated activity located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such an activity significantly degrades or is located within an Outstanding Florida Water, that the regulated activity will be clearly in the public interest [subsection 62-330.302(1), F.A.C.];

(c) A regulated activity will not adversely affect the quality of receiving waters such that the water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including any antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated [paragraph 62-330.301(1)(e), F.A.C.];

(d) A regulated activity located in, adjacent to or in close proximity to Class II waters or located in waters classified by the Department of Agriculture and Consumer Services as approved, restricted, conditionally approved, or conditionally restricted for shellfish harvesting will

comply with the additional criteria in **section 10.2.5, of this Volume** [paragraph 62-330.302(1)(c), F.A.C.];

(e) The construction of vertical seawalls in estuaries and lagoons will comply with the additional criteria in **section 10.2.6, of this Volume** [paragraph 62-330.302(1)(d), F.A.C.];

(f) A regulated activity will not cause adverse secondary impacts to the water resources [paragraph 62-330.301(1)(f), F.A.C.]; and

(g) A regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters [paragraph 62-330.302(1)(b), F.A.C.].

10.2 Environmental Criteria

Compliance with the conditions for issuance in **section 10.1.1, above,** will be determined through compliance with the criteria explained in **sections 10.2 through 10.3.8, below**.

10.2.1 Elimination or Reduction of Impacts

Protection of wetlands and other surface waters is preferred to destruction and mitigation due to the temporal loss of ecological value and uncertainty regarding the ability to recreate certain functions associated with these features. The following factors are considered in determining whether an application will be approved by the Agency: the degree of impact to wetland and other surface water functions caused by a proposed activity; whether the impact to these functions can be mitigated; and the practicability of design modifications for the site that could eliminate or reduce impacts to these functions, including alignment alternatives for a proposed linear system. Design modifications to reduce or eliminate adverse impacts must be explored, as described in **section 10.2.1.1, below**. Adverse impacts remaining after practicable design modifications have been made may be offset by mitigation as described in **sections 10.3 through 10.3.8, below**. An applicant may propose mitigation, or the Agency may suggest mitigation, to offset the adverse impacts caused by regulated activities as identified in **sections 10.2 through 10.2.8.2, below**. To receive Agency approval, an activity cannot cause a net adverse impact on wetland functions and other surface water functions that is not offset by mitigation.

10.2.1.1 Except as provided in **section 10.2.1.2, below**, if the proposed activity will result in adverse impacts to wetland functions and other surface water functions such that it does not meet the requirements of **sections 10.2.2 through 10.2.3.7, below**, then the Agency in determining whether to grant or deny a permit shall consider whether the applicant has implemented practicable design modifications to reduce or eliminate such adverse impacts.

The term "modification" shall not be construed as including the alternative of not implementing the activity in some form, nor shall it be construed as requiring a project that is significantly different in type or function. A proposed modification that is not technically capable of being completed, is not economically viable, or that adversely affects public safety through the endangerment of lives or property is not considered "practicable." A proposed modification need not remove all economic value of the property in order to be considered not "practicable." Conversely, a modification need not provide the highest and best use of the property to be "practicable." In determining whether a proposed modification is practicable, consideration shall also be given to the cost of the modification compared to the environmental benefit it achieves.

10.2.1.2 The Agency will not require the applicant to implement practicable design modifications to reduce or eliminate impacts when:

a. The ecological value of the functions provided by the area of wetland or other surface water to be adversely affected is low, based on a site specific analysis using the factors in **section 10.2.2.3, below**, and the proposed mitigation will provide greater long term ecological value than the area of wetland or other surface water to be adversely affected, or

b. The applicant proposes mitigation that implements all or part of a plan that provides regional ecological value and that provides greater long term ecological value than the area of wetland or other surface water to be adversely affected.

10.2.1.3 Should such mutual consideration of modification and mitigation not result in a permittable activity, the Agency must deny the application. Nothing herein shall imply that the Agency may not deny an application for a permit as submitted or modified, if it fails to meet the conditions for issuance, or that mitigation must be accepted by the Agency.

10.2.2 Fish, Wildlife, Listed Species and their Habitats

Pursuant to **section 10.1.1(a), above**, an applicant must provide reasonable assurances that a regulated activity will not impact the values of wetland and other surface water functions so as to cause adverse impacts to:

(a) The abundance and diversity of fish, wildlife, listed species, and the bald eagle (*Halieaeetus leucocephalus*), which is protected under the Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d (April 30, 2004); a copy of the Act is in Appendix F; and

(b) The habitat of fish, wildlife, and listed species.

In evaluating whether an applicant has provided reasonable assurances under these provisions, *de minimis* effects shall not be considered adverse for the purposes of this section.

As part of the assessment of the impacts of regulated activities upon fish and wildlife, the Agency will provide a copy of all notices of applications for individual (including conceptual approval) permits that propose regulated activities in, on, or over wetlands or other surface waters to the Florida Fish and Wildlife Conservation Commission (FWC) for review and comment, in accordance with Section 20.331(10), F.S. In addition, Agency staff may solicit comments from the FWC regarding other applications to assist in the assessment of potential impacts to fish and wildlife and their habitats, particularly with regard to listed species.

The need for a wildlife survey will depend upon the likelihood that the site is used by listed species and the bald eagle, considering site characteristics and the range and habitat needs of such species, and whether the proposed activity will impact that use such that the criteria in **sections 10.2.2 through 10.2.2.3 and section 10.2.7, below,** will not be met. Survey methodologies employed to inventory the site must provide reasonable assurances regarding the presence or absence of the subject listed species. Species-specific wildlife surveys are dependent on seasonality and day/night patterns of animals. Applicants are encouraged to discuss the proposed survey methodologies with the Agencies prior to conducting the survey.

In assessing the likelihood of use of a site by listed species, the sufficiency of proposed survey methodology, and any information provided as reasonable assurance under this section, the Agency will consider comments and recommendations received from the FWC, the U.S. Fish and Wildlife Service, comments from the applicant, and other water-resource related public comments. Scientific literature, and technical assistance documents such as the "*Florida Wildlife Conservation Guide*" at: myfwc.com/conservation/value/fwcg/ (2011), management plans, recovery plans, and habitat and conservation guidelines also will be considered.

10.2.2.1 Compliance with **sections 10.2.2 through 10.2.3.7 and 10.2.5 through 10.3.8, below,** will not be required for regulated activities in isolated wetlands less than one half acre in size, unless:

(a) The wetland is used by endangered or threatened species;

(b) The wetland is located in an area of critical state concern designated pursuant to Chapter 380, F.S.;

(c) The wetland is connected by standing or flowing surface water at seasonal high water level to one or more wetlands, and the combined wetland acreage so connected is greater than one half acre; or

(d) The Agency establishes that the wetland to be impacted is, or several such isolated wetlands to be impacted are cumulatively, of more than minimal value to fish and wildlife.

10.2.2.2 Alterations in wholly owned ponds that were entirely constructed in uplands and that are less than one acre in area and alterations in drainage ditches that were constructed in uplands will not be required to comply with the provisions of **sections 10.2.2 through 10.2.2.3, 10.2.3 through 10.2.3.7, and 10.2.5 through 10.3.8 below**, unless those ponds or ditches provide significant habitat for endangered or threatened species. This means that, except in cases where those ponds or ditches provide significant habitat for endangered or threatened species, the only environmental criteria that will apply to those ponds or ditches are those included in **sections 10.2.2.4 and 10.2.4 through 10.2.4.5, below.** This provision shall only apply to those ponds and ditches that were constructed before a permit was required under Part IV, Chapter 373, F.S., or were constructed pursuant to a permit under Part IV, Chapter 373, F.S. This provision does not apply to ditches constructed to divert natural stream flow.

10.2.2.3 The assessment of impacts expected as a result of proposed activities on the values of functions will be based on a review of scientific literature, ecologic and hydrologic information, and field inspection. When assessing the value of functions that any wetland or other surface water provides to fish, wildlife, and listed species, the factors that the Agency will consider are:

(a) Condition – this factor addresses whether the wetland or other surface water is in a high quality state or has been the subject of past alterations in hydrology, water quality, or vegetative composition. However, areas impacted by activities in violation of an Agency rule, order, or permit adopted or issued pursuant to Chapter 373, F.S., or Part VIII of Chapter 403, F.S. (1984 Supp.) as amended, will be evaluated as if the activity had not occurred;

(b) Hydrologic connection – this factor addresses the nature and degree of off-site connection, which may provide benefits to off-site water resources through detrital export, base flow maintenance, water quality enhancement or the provision of nursery habitat;

(c) Uniqueness – this factor addresses the relative rarity of the wetland or other surface water and its floral and faunal components in relation to the surrounding regional landscape;

(d) Location – this factor addresses the location of the wetland or other surface water in relation to its surroundings. In making this assessment, the Agency will consult reference materials such as the Florida Natural Areas Inventory, Comprehensive Plans, and maps created by governmental agencies identifying land with high ecological values; and

(e) Fish and wildlife utilization – this factor addresses use of the wetland or other surface water for resting, feeding, breeding, nesting or denning by fish and wildlife, particularly those that are listed species.

10.2.2.4 Water Quantity Impacts to Wetlands and Other Surface Waters

Pursuant to **section 10.1.1(a), above**, an applicant must provide reasonable assurance that the regulated activity will not change the hydroperiod of a wetland or other surface water, so as to adversely affect wetland functions or other surface water functions as follows:

(a) Whenever portions of a system, such as constructed basins, structures, stormwater ponds, canals, and ditches, could have the effect of reducing the depth, duration or frequency of inundation or saturation in a wetland or other surface water, the applicant must perform an analysis of the drawdown in water levels or diversion of water flows resulting from such activities and provide reasonable assurance that these drawdowns or diversions will not adversely impact the functions that wetlands and other surface waters provide to fish and wildlife and listed species;

(b) Increasing the depth, duration, or frequency of inundation through changing the rate or method of discharge of water to wetlands or other surface waters or by impounding water in wetlands or other surface waters must also be addressed to prevent adverse effects to functions that wetlands and other surface waters provide to fish and wildlife and listed species. Different types of wetlands respond differently to increased depth, duration, or frequency of inundation. Therefore, the applicant must provide reasonable assurance that activities that have the potential to increase discharge or water levels will not adversely affect the functioning of the specific wetland or other surface water subject to the increased discharge or water level; and

(c) Whenever portions of an activity could have the effect of altering water levels in wetlands or other surface waters, applicants shall be required to either: monitor the wetland or other surface waters to demonstrate that such alteration has not resulted in adverse impacts; or modify the activity to prevent adverse impacts. Monitoring parameters, methods, schedules, and reporting requirements shall be specified in permit conditions.

10.2.3 Public Interest Test

In determining whether a regulated activity located in, on, or over wetlands or other surface waters is not contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the regulated activity is clearly in the public interest, the Agency shall consider and balance, and an applicant must address, the following criteria:

(a) Whether the regulated activity will adversely affect the public health, safety, or welfare or the property of others (subparagraph 62-330.302(1)(a)1, F.A.C.);

(b) Whether the regulated activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats (subparagraph 62-330.302(1)(a)2, F.A.C.);

(c) Whether the regulated activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling (subparagraph 62-330.302(1)(a)3, F.A.C.);

(d) Whether the regulated activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity (subparagraph 62-330.302(1)(a)4, F.A.C.);

(e) Whether the regulated activity will be of a temporary or permanent nature (subparagraph 62-330.302(1)(a)5, F.A.C.);

(f) Whether the regulated activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S. (subparagraph 62-330.302(1)(a)6, F.A.C.); and

(g) The current condition and relative value of functions being performed by areas affected by the proposed regulated activity (subparagraph 62-330.302(1)(a)7, F.A.C.).

10.2.3.1 Public Health, Safety, or Welfare or the Property of Others

In reviewing and balancing the criterion regarding public health, safety, welfare and the property of others in **section 10.2.3(a), above**, the Agency will evaluate whether the regulated activity located in, on, or over wetlands or other surface waters will cause:

(a) An environmental hazard to public health or safety or improvement to public health or safety with respect to environmental issues. Each applicant must identify potential environmental public health or safety issues resulting from their project. Examples of these issues include: mosquito control; proper disposal of solid, hazardous, domestic or industrial waste; aids to navigation; hurricane preparedness or cleanup; environmental remediation, enhancement or restoration; and similar environmentally related issues. For example, the installation of navigational aids may improve public safety and may reduce impacts to public resources;

(b) Impacts to areas classified by the Department of Agriculture and Consumer Services as approved, conditionally approved, restricted or conditionally restricted for shellfish harvesting. Activities that would cause closure or a more restrictive classification or management plan for a shellfish harvesting area would result in a negative factor in the public interest balance with respect to this criterion;

(c) Flooding or alleviate existing flooding on the property of others. There is at least a neutral factor in the public interest balance with respect to the potential for causing or alleviating flooding problems if the applicant meets the water quantity criteria in **Part III of Volume II**; and

(d) Environmental impacts to the property of others. For example, construction of a ditch that lowers the water table such that off-site wetlands or other surface waters would be partly or

fully drained would be an environmental impact to the property of others. The Agency will not consider impacts to property values.

10.2.3.2 Fish and Wildlife and their Habitats

The Agency's public interest review of that portion of a proposed activity in, on, or over wetlands and other surface waters for impacts to "the conservation of fish and wildlife, including endangered or threatened species, or their habitats" is encompassed within the required review of the entire activity under **section 10.2.2, above**. An applicant must always provide the reasonable assurances required under **section 10.2.2, above**.

10.2.3.3 Navigation, Water Flow, Erosion and Shoaling

In reviewing and balancing the criterion on navigation, erosion and shoaling in **section 10.2.3(c), above**, the Agency will evaluate whether the regulated activity located in, on or over wetlands or other surface waters will:

(a) Significantly impede navigability or enhance navigability. The Agency will consider the current navigational uses of the surface waters and will not speculate on uses that may occur in the future. Applicants proposing to construct bridges or other traversing works must address adequate horizontal and vertical clearance for the type of watercraft currently navigating the surface waters. Applicants proposing to construct docks, piers and other works that extend into surface waters must address the continued navigability of these waters. An encroachment into a marked or customarily used navigation channel is an example of a significant impediment to navigability. Applicants proposing temporary activities in navigable surface waters, such as the mooring of construction barges, must address measures for clearly marking the work as a hazard to navigation, including nighttime lighting. The addition of navigational aids may be beneficial to navigation. If an applicant has a U.S. Coast Guard permit issued pursuant to 14 U.S.C. Section 81 or 33 C.F.R. Part 62 for a regulated activity in, on or over wetlands or other surface waters, submittal of this permit with the application may assist the applicant in addressing this criterion.

(b) Cause or alleviate harmful erosion or shoaling. Applicants proposing activities such as channel relocation, artificial reefs, construction of jetties, breakwaters, groins, bulkheads and beach nourishment must address existing and expected erosion or shoaling in the proposed design. Compliance with erosion control best management practices referenced in **Part IV of this Volume**, will be an important consideration in addressing this criterion. Each permit will have a general condition that requires applicants to utilize appropriate erosion control practices and to correct any adverse erosion or shoaling resulting from the regulated activities.

(c) Significantly impact or enhance water flow. Applicants must address significant obstructions to sheet flow by assessing the need for structures that minimize the obstruction such as culverts or spreader swales in fill areas. Compliance with the water quantity criteria found in **section 10.2.2.4, above,** shall be an important consideration in addressing this criterion.

10.2.3.4 Fisheries, Recreation, Marine Productivity

In reviewing and balancing the criterion regarding fishing or recreational values and marine productivity in **section 10.2.3(d), above**, the Agency will evaluate whether the regulated activity in, on, or over wetlands or other surface waters will cause:

(a) Adverse effects to sport or commercial fisheries or marine productivity. Examples of activities that may adversely affect fisheries or marine productivity are the elimination or degradation of fish nursery habitat, change in ambient water temperature, change in normal salinity regime, reduction in detrital export, change in nutrient levels, or other adverse effects on populations of native aquatic organisms.

(b) Adverse effects or improvements to existing recreational uses of a wetland or other surface water. Wetlands and other surface waters may provide recreational uses such as boating, fishing, swimming, waterskiing, hunting, and birdwatching. An example of potential adverse effects to recreational uses is the construction of a traversing work, such as a road crossing a waterway, which could impact the current use of the waterway for boating.

10.2.3.5 Temporary or Permanent Nature

When evaluating the other criteria in **section 10.2.3, above**, the Agency will consider the frequency and duration of the impacts caused by the proposed activity. Temporary impacts will be considered less harmful than permanent impacts of the same nature and extent.

10.2.3.6 Historical and Archaeological Resources

In reviewing and balancing the criterion regarding historical and archaeological resources in **section 10.2.3(f), above**, the Agency will evaluate whether the regulated activity located in, on, or over wetlands or other surface waters will impact significant historical or archaeological resources. The applicant must map the location of and characterize the significance of any known historical or archaeological resources that may be affected by the regulated activity located in, on or over wetlands or other surface waters. The Agency will provide copies of all individual (including conceptual approval) permit applications to the Division of Historical Resources of the Department of State and solicit its comments regarding whether the regulated activity may adversely affect significant historical and archaeological resources. The applicant will be required to perform an archaeological survey and to develop and implement a plan as necessary to demarcate and protect the significant historical or archaeological resources, if such resources are reasonably expected to be impacted by the regulated activity.

10.2.3.7 Current Condition and Relative Value of Functions

When evaluating other criteria in **section 10.2.3, above**, the Agency will consider the current condition and relative value of the functions performed by wetlands and other surface waters affected by the proposed regulated activity. Wetlands and other surface waters that have had their hydrology, water quality or vegetative composition permanently impacted due to past legal alterations or occurrences such as infestation with exotic species, usually provide lower habitat value to fish and wildlife. However, if the wetland or other surface water is currently degraded, but is still providing some beneficial functions, consideration will be given to whether the regulated activity will further reduce or eliminate those functions. The Agency will also evaluate the predicted ability of the wetlands or other surface waters to maintain their current functions as

part of the proposed activity once it is developed. Where previous impacts to a wetland or other surface water are temporary in nature, consideration will be given to the inherent functions of these areas relative to seasonal hydrologic changes, and expected vegetative regeneration and projected habitat functions if the use of the subject property were to remain unchanged. When evaluating impacts to mitigation sites that have not reached success pursuant to **section 10.3.6, below**, the Agency shall consider the functions that the mitigation site was intended to offset, and any additional delay or reduction in offsetting those functions that may be caused by impacting the mitigation site. Previous construction or alteration undertaken in violation of Chapter 373, F.S., or Agency rule, order or permit will not be considered as having diminished the condition and relative value of a wetland or other surface water.

10.2.4 Water Quality

Pursuant to **section 10.1.1(c), above**, an applicant must provide reasonable assurance that the regulated activity will not cause or contribute to violations of water quality standards in areas where water quality standards apply.

Reasonable assurances regarding water quality must be provided both for the short term and the long term, addressing the proposed construction, alteration, operation, maintenance, removal and abandonment of the project. The following requirements are in addition to the water quality requirements found in **sections 8.2.3 and 8.3 through 8.3.3, above**.

10.2.4.1 Short Term Water Quality Considerations

The applicant must address the short term water quality impacts of a proposed activity, including:

(a) Providing and maintaining turbidity barriers or similar devices for the duration of dewatering and other construction activities in or adjacent to wetlands or other surface waters;

(b) Stabilizing newly created slopes or surfaces in or adjacent to wetlands and other surface waters to prevent erosion and turbidity;

(c) Providing proper construction access for barges, boats and equipment to ensure that propeller dredging and rutting from vehicular traffic does not occur;

(d) Maintaining construction equipment to ensure that oils, greases, gasoline, or other pollutants are not released into wetlands or other surface waters;

(e) Controlling the discharge from spoil disposal sites; and

(f) Preventing any other discharge or release of pollutants during construction or alteration that will cause or contribute to water quality standards being violated.

10.2.4.2 Long Term Water Quality Considerations

The applicant must address the long term water quality impacts of a proposed activity, including:

(a) The potential of a constructed or altered water body to cause or contribute to violations of water quality standards due to its depth or configuration. For example, the depth of water bodies must be designed to ensure proper mixing so that the water quality standard for

dissolved oxygen will not be violated in the lower levels of the water body, but the depth should not be so shallow that the bottom sediments are frequently resuspended by boat activity. Water bodies must be configured to prevent the creation of debris traps or stagnant areas that could result in violations of water quality standards.

(b) Long term erosion, siltation or propeller dredging that will cause turbidity violations.

(c) Prevention of any discharge or release of pollutants from the activity that will cause water quality standards to be violated.

10.2.4.3 Additional Water Quality Considerations for Docking Facilities

Docking facilities, due to their nature, provide potential sources of pollutants to wetlands and other surface waters. If the proposed work has the potential to adversely affect water quality, an applicant proposing the construction, expansion or alteration of a docking facility must address the following factors to provide the required reasonable assurance that water quality standards will not be violated:

(a) Hydrographic information or studies shall be required for docking facilities of greater than ten boat slips, unless hydrographic information or studies previously conducted in the vicinity of the facility provide reasonable assurance that the conditions of the water body and the nature of the proposed activity do not warrant the need for new information or studies. Hydrographic information or studies also may be required for docking facilities of fewer than ten slips, dependent upon the site specific features described in **section 10.2.4.3(b), below**. In all cases, the design of the hydrographic study, and its complexity, will be dependent upon the specific project design and the specific features of the project site.

(b) The purpose of the hydrographic information or studies is to document the flushing time (the time required to reduce the concentration of a conservative pollutant to ten percent of its original concentration) of the water at the docking facility. This information is used to determine the likelihood that the facility will accumulate pollutants to the extent that water quality violations will occur. Generally, a flushing time of less than or equal to four days is the maximum that is desirable for docking facilities. However, the evaluation of the maximum desirable flushing time also takes into consideration the size (number of slips) and configuration of the proposed docking facility; the amplitude and periodicity of the tide; the geometry of the subject water body; the circulation and flushing of the water body; the quality of the waters at the project site; the type and nature of the docking facility; the services provided at the docking facility; and the number and type of other sources of water pollution in the area.

(c) The level and type of hydrographic information or studies that will be required for the proposed docking facility will be determined based upon an analysis of site specific characteristics. As compared to sites that flush in less than four days, sites where the flushing time is greater than four days generally will require additional, more complex levels of hydrographic studies or information to determine whether water quality standards can be expected to be violated by the facility. The degree and complexity of the hydrographic study will be dependent upon the types of considerations listed in **section 10.2.4.3(b), above**, including the potential for the facility, based on its design and location, to add pollutants to the receiving waters. Types of information that can be required include site-specific measurements of: waterway geometry, tidal amplitude, the periodicity of forces that drive

water movement at the site, and water tracer studies that document specific circulation patterns.

(d) The applicant shall document, through hydrographic information or studies, that pollutants leaving the site of the docking facility will be adequately dispersed in the receiving water body so as to not cause or contribute to violations of water quality standards based on circulation patterns and flushing characteristics of the receiving water body.

(e) In all cases, the hydrographic studies shall be designed to document the hydrographic characteristics of the project site and surrounding waters. All hydrographic studies must be based on the factors described in **sections (a) through (d), above**. An applicant should consult with the Agency prior to conducting such a study.

(f) In accordance with Chapters 62-761 and 62-762, F.A.C., applicants are advised that fueling facilities must have secondary containment equipment and shall be located and operated so that the potential for spills or discharges to surface waters and wetlands is minimized.

(g) The disposal of domestic wastes from boat heads, particularly from liveaboard vessels, must be addressed to prevent improper disposal into wetlands or other surface waters. A liveaboard vessel shall be defined as a vessel docked at the facility that is inhabited by a person or persons for any five consecutive days or a total of ten days within a 30-day period.

(h) The disposal of solid waste, such as garbage and fish cleaning debris, must be addressed to prevent disposal into wetlands or other surface waters.

(i) Pollutant leaching characteristics of materials such as treated pilings and anti-fouling paints used on the hulls of vessels must be addressed to ensure that any pollutants that leach from the structures and vessels will not cause violations of water quality standards given the flushing at the site and the type, number and concentration of the likely sources of pollutants.

10.2.4.4 Mixing Zones

A temporary mixing zone for water quality during construction or alteration may be requested by the applicant. The Agency shall review such requests pursuant to Rule 62-4.242 and subsection 62-4.244(5), F.A.C.

10.2.4.5 Where Ambient Water Quality Does Not Meet Standards

If the site of the proposed activity currently does not meet water quality standards, the applicant must demonstrate compliance with the water quality standards by meting the provisions in **sections 10.2.4.1, 10.2.4.2, and 10.2.4.3, above,** as applicable, and for the parameters that do not meet water quality standards, the applicant must demonstrate that the proposed activity will not contribute to the existing violation. If the proposed activity will contribute to the existing violation, mitigation may be proposed as described in **section 10.3.1.4, below**.

10.2.5 Class II Waters; Waters Approved for Shellfish Harvesting

The special value and importance of shellfish harvesting waters to Florida's economy as existing or potential sites of commercial and recreational shellfish harvesting and as a nursery area for fish and

shellfish is recognized by the Agencies. In accordance with **section 10.1.1(d), above**, the Agency shall deny a permit for a regulated activity located:

(a) In Class II or Class III waters, as designated in Chapter 62-302, F.A.C., that are classified by the Department of Agriculture and Consumer Services (DACS) as "approved," "restricted," "conditionally approved," or "conditionally restricted" for shellfish harvesting. However, the Agency may issue permits or certifications in such waters for: maintenance dredging of navigational channels; the construction of shoreline protection structures; the installation of transmission and distribution lines for carrying potable water, electricity or communication cables in rights-of-way previously used for such lines; or clam and oyster culture. This provision also shall not apply to docking facilities that meet all of the following criteria:

1. No more than two vessels shall be moored, and no more than two slips constructed in total at a private residential single-family dock, or no more than ten vessels moored and no more than ten slips constructed in total at a private residential multi-family, commercial, or governmental dock at any time;

2. No overboard discharges of trash, human or animal waste, or fuel shall occur at the dock. For all commercial, governmental, or private residential multi-family docks that will moor vessels that contain, or have the capability of containing, a permanent marine sanitation device, the applicant must provide reasonable assurance that there will not be a discharge of domestic wastes from such vessels at the dock;

3. Any enclosed, non-water dependent structures shall be located on the uplands;

4. Prior to the mooring of any vessel at the dock, there shall be existing structures with toilet facilities located on the uplands;

5. Any proposed boat shelter shall not be enclosed with screens, walls, doors, or windows;

6. A minimum of one foot clearance must be maintained between the deepest draft of any vessel (including the vessel propulsion unit) moored in the water at the dock and the top of any submerged resources (which includes rooted aquatic macrophyte communities, attached macro-marine algae communities, sponge beds, coral communities, and oyster communities) in the mooring location, as measured at mean low water. The height of rooted aquatic macrophyte communities, attached macro-marine algae communities shall be measured as they exist during the growing season (April through September);

7. Any structures located over grassbeds shall be designed so as to allow for the maximum practicable amount of light penetration; and

8. There shall be no overnight occupancy at any time on the dock or on any vessels moored to the dock.

Solely for purposes of this subsection, the term "vessel" shall include all sailboats and motorized boats of any type other than personal watercraft as defined in Section 327.02, F.S., whether moored in the water or stored on the dock, in a boat lift, or on a floating vessel platform.

(b) In any Class II waters that are not classified by DACS as "approved," "restricted," "conditionally approved," or "conditionally restricted" for shellfish harvesting, unless the applicant submits a plan or proposes a procedure to protect those waters and waters in the vicinity. The plan or procedure shall detail the measures to be taken to prevent significant damage to the immediate project area and the adjacent area, and shall provide reasonable assurance that the water quality standards for Class II waters will not be violated.

(c) In any class of waters where the location of the activity is adjacent or in close proximity to Class II waters, unless the applicant submits a plan or proposes a procedure that demonstrates that the regulated activity will not have a negative effect on the Class II waters and will not result in violations of water quality standards in the Class II waters.

10.2.6 Vertical Seawalls

(a) The construction of vertical seawalls in estuaries or lagoons is prohibited unless one of the following conditions exists:

1. The proposed construction is located within a port, as defined in Section 315.02 or 403.021, F.S.;

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 to be 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.

5. The proposed construction is located within the coastal areas of Collier, Lee, Miami-Dade, and Monroe Counties, or Charlotte Harbor/Peace River in Charlotte County designated by the National Marine Fisheries Service as Critical Habitat for the smalltooth sawfish (*Pristis pectinata*) -- see http://www.nmfs.noaa.gov/pr/pdfs/criticalhabitat/smalltoothsawfish.pdf.

(b) When considering an application for a permit to repair or replace an existing vertical seawall, the Agency shall require such seawall to be faced with riprap material, or to be replaced entirely with riprap material unless a condition specified in **paragraphs 1 through 5, above,** exists. However, nothing in this subsection shall be construed to hinder any activity previously exempt or permitted under Part IV of Chapter 373, F.S., or permitted under Chapter 161, F.S.

10.2.7 Secondary Impacts

Pursuant to **section 10.1.1(f), above**, an applicant must provide reasonable assurances that a regulated activity will not cause adverse secondary impacts to the water resource, as described in

sections (a) through (d), below. Aquatic or wetland dependent fish and wildlife are an integral part of the water resources that the Agency is authorized to protect under Part IV, Chapter 373, F.S.

Aquatic or wetland dependent species that are listed species are particularly in need of protection, as are: the bald eagle (*Halieaeetus leucocephalus*), which is protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) and Rule 68A-16.002, F.A.C.

A proposed activity shall be reviewed under this criterion by evaluating the impacts to: wetland and surface water functions identified in **section 10.2.2, above**, water quality, upland habitat for bald eagles and aquatic or wetland dependent listed species, and historical and archaeological resources. *De minimis* or remotely related secondary impacts will not be considered. Applicants may propose measures such as preservation to prevent secondary impacts. Such preservation shall comply with the land preservation provisions of **section 10.3.8, below**. If such secondary impacts cannot be prevented, the applicant may propose mitigation measures as provided for in **sections 10.3 through 10.3.8, below**.

This secondary impact criterion consists of the following four parts:

(a) An applicant shall provide reasonable assurance that the secondary impacts from construction, alteration, and intended or reasonably expected uses of a proposed activity will not cause or contribute to violations of water quality standards or adverse impacts to the functions of wetlands or other surface waters as described in **section 10.2.2, above**.

Impacts such as lights from development adjacent to marine turtle nesting beaches, boat traffic generated by a proposed dock, boat ramp or dry dock facility, which causes an increased threat of collision with manatees; impacts to wildlife from vehicles using proposed roads in wetlands or other surface waters; impacts to water quality associated with the use of septic tanks or propeller dredging by boats and wakes from boats; and impacts associated with docking facilities as described in **sections 10.2.4.3(f) through (i), above**, will be considered relative to the specific activities proposed and the potential for such impacts. Impacts of groundwater withdrawals upon wetlands and other surface waters that result from the use of wells permitted pursuant to the District consumptive use rules shall not be considered under the rules adopted pursuant to Part IV of Chapter 373, F.S.

Secondary impacts to the habitat functions of wetlands associated with adjacent upland activities will not be considered adverse if buffers, with a minimum width of 15 ft. and an average width of 25 ft., are provided abutting those wetlands that will remain under the permitted design, unless additional measures are needed for protection of wetlands used by bald eagles for nesting, or listed species for nesting, denning, or critically important feeding habitat. The mere fact that a species is listed does not imply that all of its feeding habitat is critically important. Buffers shall remain in an undisturbed condition, except for drainage features such as spreader swales and discharge structures, provided the construction or use of these features does not adversely impact wetlands. Where an applicant elects not to use buffers of the above-described dimensions, buffers of different dimensions, or other measures, may be proposed to provide the required reasonable assurance. Wetlands or other surface waters shall not be filled to achieve this buffer requirement. For example, an undisturbed upland buffer would not be required to be established waterward of areas of wetlands or other surface waters that are authorized to be filled for other purposes, such as to construct a bulkhead, although this does not relieve the applicant from providing other reasonable assurance demonstrating that the construction, alteration, and intended or

reasonably expected uses of a proposed activity will not result in adverse secondary impacts to wetlands and other surface waters. Buffers proposed to protect against secondary impacts shall be allowed to overlap with vegetated natural buffers, except where the Agency determines that such overlap would adversely affect the purposes each buffer is designed to address**.**

(b) An applicant shall provide reasonable assurance that the construction, alteration, and intended or reasonably expected uses of a proposed activity will not adversely impact the ecological value of uplands for bald eagles, and aquatic or wetland dependent listed animal species for enabling existing nesting or denning by these species, but not including:

1. Areas needed for foraging; or

2. Wildlife corridors, except for those limited areas of uplands necessary for ingress and egress to the nest or den site from the wetland or other surface water.

Table 10.2.7-1 identifies those aquatic or wetland dependent listed species and species having special protection that use upland habitats for nesting and denning.

In evaluating whether a proposed activity will adversely impact the ecological value of uplands to the bald eagle and aquatic or wetland dependent listed species, the Agencies shall consider comments received from the Florida Fish and Wildlife Conservation Commission (FWC), the U.S. Fish and Wildlife Service, the applicant, and the public (for comments related to this section). Permitting guidelines within management plans, recovery plans, habitat and conservation guidelines, scientific literature, and technical assistance documents such as the "*Florida Wildlife Conservation Guide*" (myfwc.com/conservation/value/fwcg/) also will be considered.

Compliance with the U.S. Fish and Wildlife Service (USFWS) *Habitat Management Guidelines for the Wood Stork in the Southeast Region* (January 1990), available at: http://www.fws.gov/northflorida/WoodStorks/Documents/19900100_gd_Wood-stork-habitat-guidelines-1990.pdf, and reproduced in Appendix G, will provide reasonable assurance that the proposed activity will not adversely impact upland habitat functions described in **paragraph (b)** for the wood stork.

Secondary impacts to the functions of wetlands or uplands for nesting of bald eagles (*Haliaeetus leucocephalus)* will not be considered adverse if the applicant holds a valid permit pursuant to paragraph 68A-16.002(1)(a), F.A.C., or a valid authorization as described in paragraph 68A-16.002(1)(c), F.A.C., for the same activities proposed by the applicant under Part IV of Chapter 373, F.S., or if the applicant demonstrates compliance with the FWC Bald Eagle Management Plan (April 9, 2008) incorporated by reference in subsection 68A-16.002(4), F.A.C. (effective May 15, 2008), and reproduced in Appendix H).

For those aquatic or wetland dependent listed animal species for which habitat management guidelines have not been developed, or in cases where an applicant does not propose to use USFWS or FWC habitat management guidelines, the applicant may propose measures to mitigate adverse impacts to upland habitat functions described in **paragraph (b)** provided to aquatic or wetland dependent listed animal species and species having special protection

listed in **Table 10.2.7-1**. Such proposals will be evaluated by the Agency to determine if the measures provide reasonable assurance.

(c) In addition to evaluating the impacts in the area of any dredging and filling in, on, or over wetlands or other surface waters, and as part of the balancing review under **section 10.2.3, above**, the Agency will consider any other associated activities that are very closely linked and causally related to any proposed dredging or filling that have the potential to cause impacts to significant historical and archaeological resources.

(d) An applicant shall provide reasonable assurance that the following future activities will not result in water quality violations or adverse impacts to the functions of wetlands or other surface waters as described in **section 10.2.2, above:**

1. Additional phases or expansion of the proposed activity for which plans have been submitted to the Agency or other governmental agencies; and

2. On-site and off-site activities regulated under Part IV, Chapter 373, F.S., or activities described in Section 403.813(1), F.S., that are very closely linked and causally related to the proposed activity.

As part of this review, the Agency will also consider the impacts of the intended or reasonably expected uses of the future activities on water quality and wetland and other surface water functions.

In conducting the analysis under **section (d)2, above**, the Agency will consider those future projects or activities that would not occur but for the proposed activity, including where the proposed activity would be considered a waste of resources should the future project or activities not be permitted.

Where practicable, proposed activities shall be designed in a fashion that does not necessitate future impacts to wetland and other surface water functions. Activity expansions and future activity phases will be considered in the secondary impact analysis. If the Agency determines that future phases of an activity involve impacts that do not appear to meet permitting criteria, the current application shall be denied unless the applicant can provide reasonable assurance that those future phases can comply with permitting criteria. One way for applicants to establish that future phases or system

TABLE 10.2.7-1
LISTED WILDLIFE SPECIES THAT ARE AQUATIC OR WETLAND DEPENDENT AND THAT USE UPLAND HABITATS FOR NESTING OR DENNING

Invertebrates:

Common Name	Scientific Name	Status
Panama City crayfish	*Procambarus econfinae*	SSC

Fish:

Common Name	Scientific Name	Status
Rivulus	*Rivulus marmoratus*	SSC

Amphibians:

Common Name	Scientific Name	Status
Florida bog frog	*Lithobates okaloosae*	SSC
Frosted flatwoods salamander	*Ambystoma cingulatum*	FT
Gopher frog	*Lithobates capito*	SSC
Pine Barrens treefrog	*Hyla andersonii*	SSC
Reticulated flatwoods salamander	*Ambystoma bishopi*	FE

Reptiles:

Common Name	Scientific Name	Status
Alligator snapping turtle	*Macrochelys temminckii*	SSC
American alligator	*Alligator mississippiensis*	FT(S/A)
American crocodile	*Crocodylus acutus*	FT
Atlantic salt marsh snake	*Nerodia clarkii taeniata*	FT
Barbour's map turtle	*Graptemys barbouri*	SSC
Green sea (marine) turtle	*Chelonia mydas*	FE
Hawksbill sea (marine) turtle	*Eretmochelys imbricata*	FE
Kemp's ridley sea (marine) turtle	*Lepidochelys kempii*	FE
Leatherback sea (marine) turtle	*Dermochelys coriacea*	FE
Loggerhead sea (marine) turtle	*Caretta caretta*	FT
Peninsula ribbon snake[1]	*Thamnophis sauritus sackenii*	ST
Striped mud turtle[1]	*Kinosternon baurii*	ST
Suwannee cooter	*Pseudemys suwanniensis*	SSC

Birds:

Common Name	Scientific Name	Status
American oystercatcher	*Haematopus palliatus*	SSC
Audubon's crested caracara	*Polyborus plancus audubonii*	FT
Black skimmer	*Rynchops niger*	SSC
Brown pelican	*Pelecanus occidentalis*	SSC
Cape Sable seaside sparrow	*Ammodramus maritimus mirabilis*	FE
Everglade snail kite	*Rostrhamus sociabilis plumbeus*	FE
Florida sandhill crane	*Grus canadensis pratensis*	ST
Least tern	*Sterna antillarum*	ST
Limpkin	*Aramus guarauna*	SSC
Little blue heron	*Egretta caerulea*	SSC

Common Name	Scientific Name	Status
Marian's marsh wren	*Cistothorus palustris marianae*	SSC
Osprey[2]	*Pandion haliaetus*	SSC
Piping plover	*Charadrius melodus*	FT
Red-cockaded woodpecker	*Picoides borealis* (wetland dependent only in Lee, Collier, and Charlotte counties)	FE
Reddish egret	*Egretta rufescens*	SSC
Roseate spoonbill	*Platalea ajaja*	SSC
Roseate tern	*Sterna dougallii dougallii*	FT
Scott's seaside sparrow	*Ammodramus maritimus peninsulae*	SSC
Snowy egret	*Egretta thula*	SSC
Snowy plover	*Charadrius nivosus* (*Charadrius alexandrinus*)	ST
Tricolored heron	*Egretta tricolor*	SSC
Wakulla seaside sparrow	*Ammodramus maritimus juncicola*	SSC
White-crowned pigeon	*Patagioenas leucocephala*	ST
Whooping crane	*Grus americana*	FXN
White ibis	*Eudocimus albus*	SSC
Worthington's marsh wren	*Cistothorus palustris griseus*	SSC
Wood stork	*Mycteria americana*	FE

Mammals:

Common Name	Scientific Name	Status
Big Cypress fox squirrel	*Sciurus niger avicennia*	ST
Everglades mink	*Neovison vison evergladensis*	ST
Florida bonneted (mastiff) bat	*Eumops [=glaucinus] floridanus*	ST
Florida panther	*Puma [=Felis] concolor coryi*	FE
Florida salt marsh vole	*Microtus pennsylvanicus dukecampbelli*	FE
Gray bat	*Myotis grisescens*	FE
Homosassa shrew	*Sorex longirostris eonis*	SSC
Indiana bat	*Myotis sodalis*	FE
Key deer	*Odocoileus virginianus clavium*	FE
Lower Keys rabbit	*Sylvilagus palustris hefneri*	FE
Rice rat	*Oryzomys palustris natator*	FE[1]
Sanibel Island rice rat	*Oryzomys palustris sanibeli*	SSC
Sherman's short-tailed shrew	*Blarina [=carolinensis] shermani*	SSC

FE = Federally-designated Endangered
FT = Federally-designated Threatened
FXN = Federally-designated Threatened Nonessential Experimental Population
FT(S/A) = Federally-designated Threatened species due to similarity of appearance
ST = State-designated Threatened
SSC = State Species of Special Concern

[1] Lower keys population only.
[2] Monroe County population only.

Species Having Special Protection

Bald eagle	*Haliaeetus leucocephalus*	Additional protection is provided to this species in accordance with the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) and Rule 68A-16.002. F.A.C.

expansions do not have adverse secondary impacts is for the applicant to obtain a conceptual approval permit for the entire project.

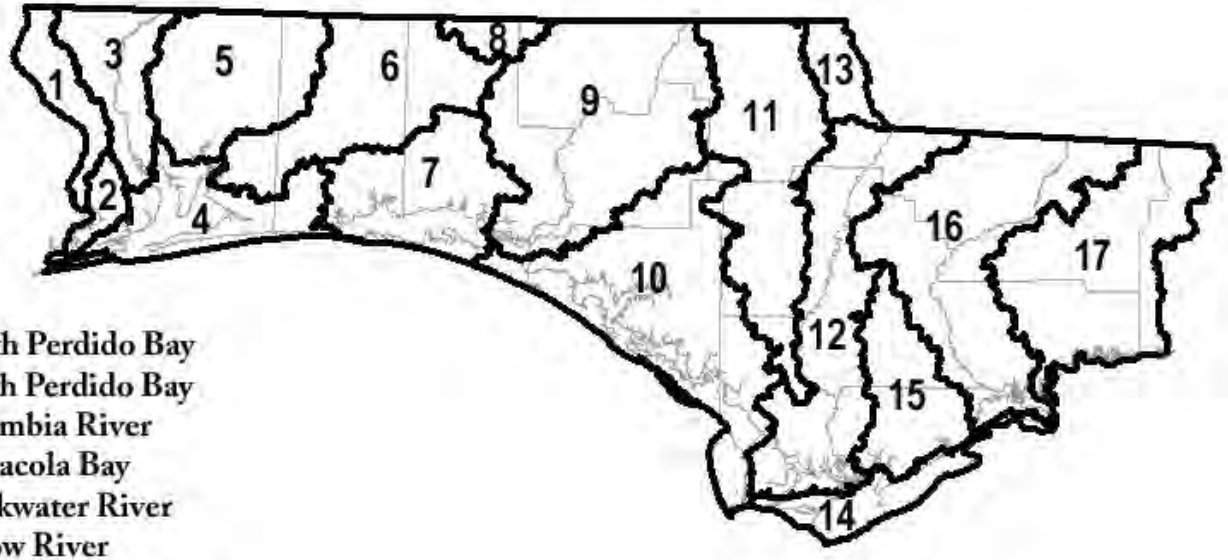
10.2.8 Cumulative Impacts

Pursuant to **section 10.1.1(g), above**, an applicant must provide reasonable assurance that a regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters within the same drainage basin as the regulated activity for which a permit is sought. The impact on wetlands and other surface waters shall be reviewed by evaluating the impacts to water quality as set forth in **section 10.1.1(c), above,** and by evaluating the impacts to functions identified in **section 10.2.2, above**. If an applicant proposes to mitigate these adverse impacts within the same drainage basin as the impacts, and if the mitigation fully offsets these impacts, then the Agency will consider the regulated activity to have no unacceptable cumulative impacts upon wetlands and other surface waters, and consequently, the condition for issuance in **section 10.1.1(g)** will be satisfied. The drainage basins within each District are reproduced below in **Figures 10.2.8-1 through 10.2.8-5**.

If an applicant proposes to mitigate adverse impacts through mitigation physically located outside of the drainage basin where the impacts are proposed, an applicant may demonstrate that such mitigation fully offsets the adverse impacts within the impacted drainage basin (as measured from the impacted drainage basin), based on factors such as connectivity of waters, hydrology, habitat range of affected species, and water quality. If the mitigation fully offsets the impacts (as measured from the impacted drainage basin), then the Agency will consider the regulated activity to have no unacceptable cumulative impacts upon wetlands and other surface waters, and consequently, the condition for issuance in section 10.1.1(g), above, will be satisfied.

When adverse impacts to water quality or adverse impacts to the functions of wetlands and other surface waters, as referenced in the paragraphs above, are not fully offset within the same drainage basin as the impacts, then an applicant must provide reasonable assurance that the proposed activity, when considered with the following activities, will not result in unacceptable cumulative impacts to water quality or the functions of wetlands and other surface waters, within the same drainage basin:

(a) Projects that are existing or activities regulated under Part IV, Chapter 373, F.S., that are under construction or projects for which permits or determinations pursuant to Section 373.421, F.S., or Section 403.914, F.S. (1991), have been sought.



1 North Perdido Bay
2 South Perdido Bay
3 Escambia River
4 Pensacola Bay
5 Blackwater River
6 Yellow River
7 Choctawhatchee Bay
8 Pea River
9 Choctawhatchee River
10 St. Andrews Bay
11 Chipola River
12 Apalachicola River
13 Chattahoochee River
14 Apalachicola Bay
15 New River
16 Ochlockonee River
17 St Marks River

Figure 10.2.8-1 Drainage Basins within the geographical territory of the Northwest Florida Water Management District (Source: USGS Hydrologic Unit Code (HUC) Basins, 1:24K, HPGN)

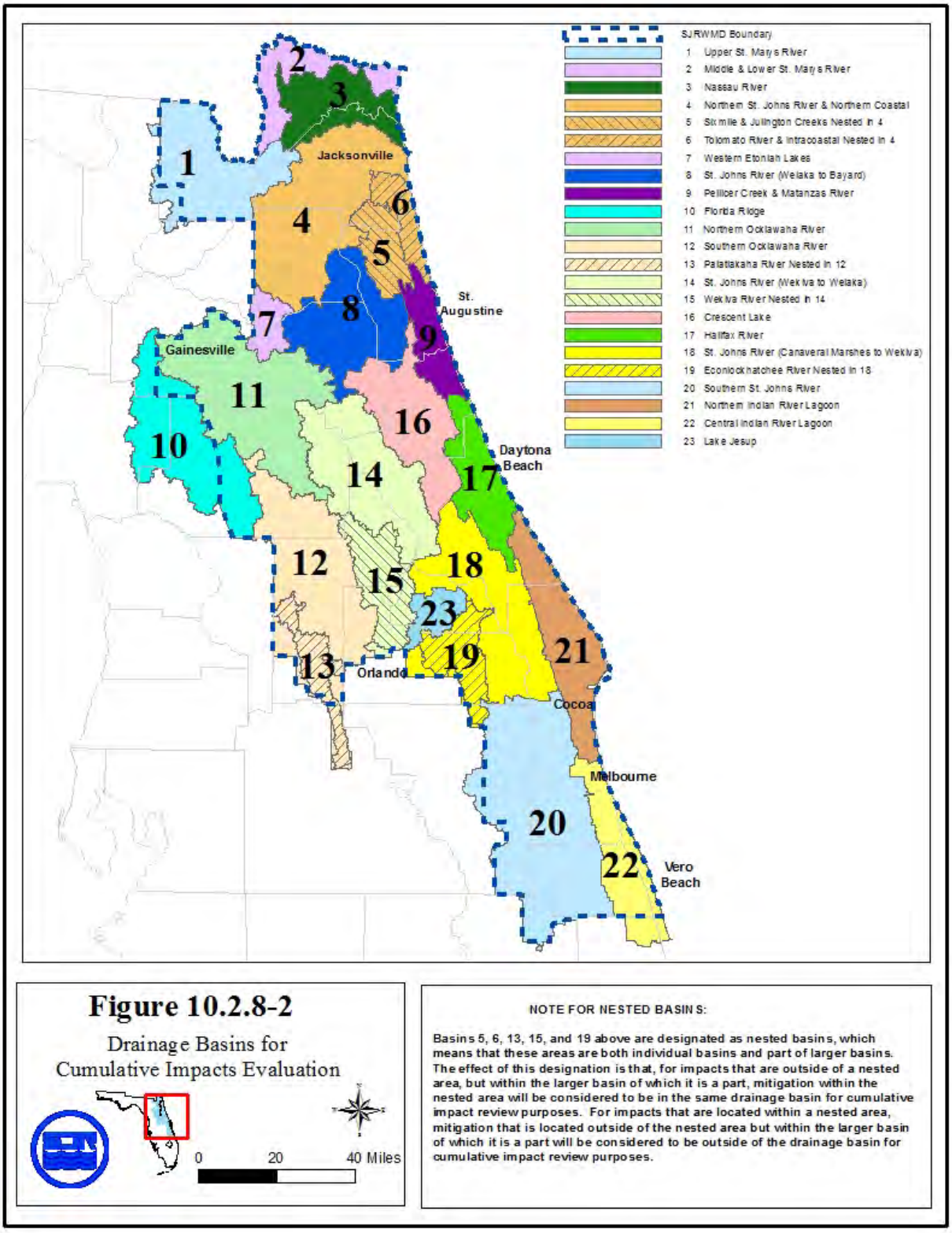


Figure 10.2.8-2

Drainage Basins for Cumulative Impacts Evaluation

NOTE FOR NESTED BASINS:

Basins 5, 6, 13, 15, and 19 above are designated as nested basins, which means that these areas are both individual basins and part of larger basins. The effect of this designation is that, for impacts that are outside of a nested area, but within the larger basin of which it is a part, mitigation within the nested area will be considered to be in the same drainage basin for cumulative impact review purposes. For impacts that are located within a nested area, mitigation that is located outside of the nested area but within the larger basin of which it is a part will be considered to be outside of the drainage basin for cumulative impact review purposes.

Figure 10.2.8-3 Drainage Basins for Cumulative Impact Determinations within the Suwannee River Water Management District

Figure 10.2.8-4

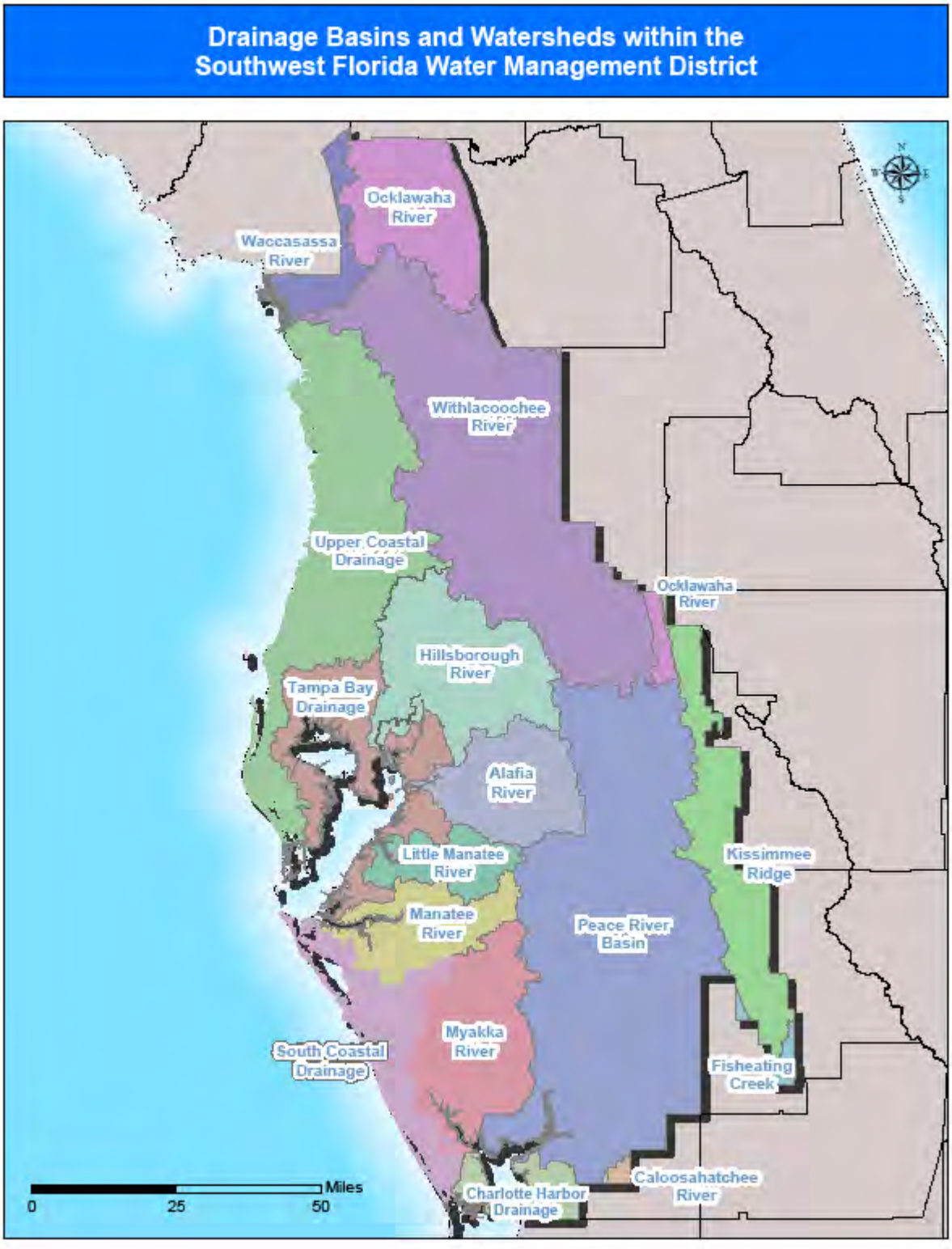
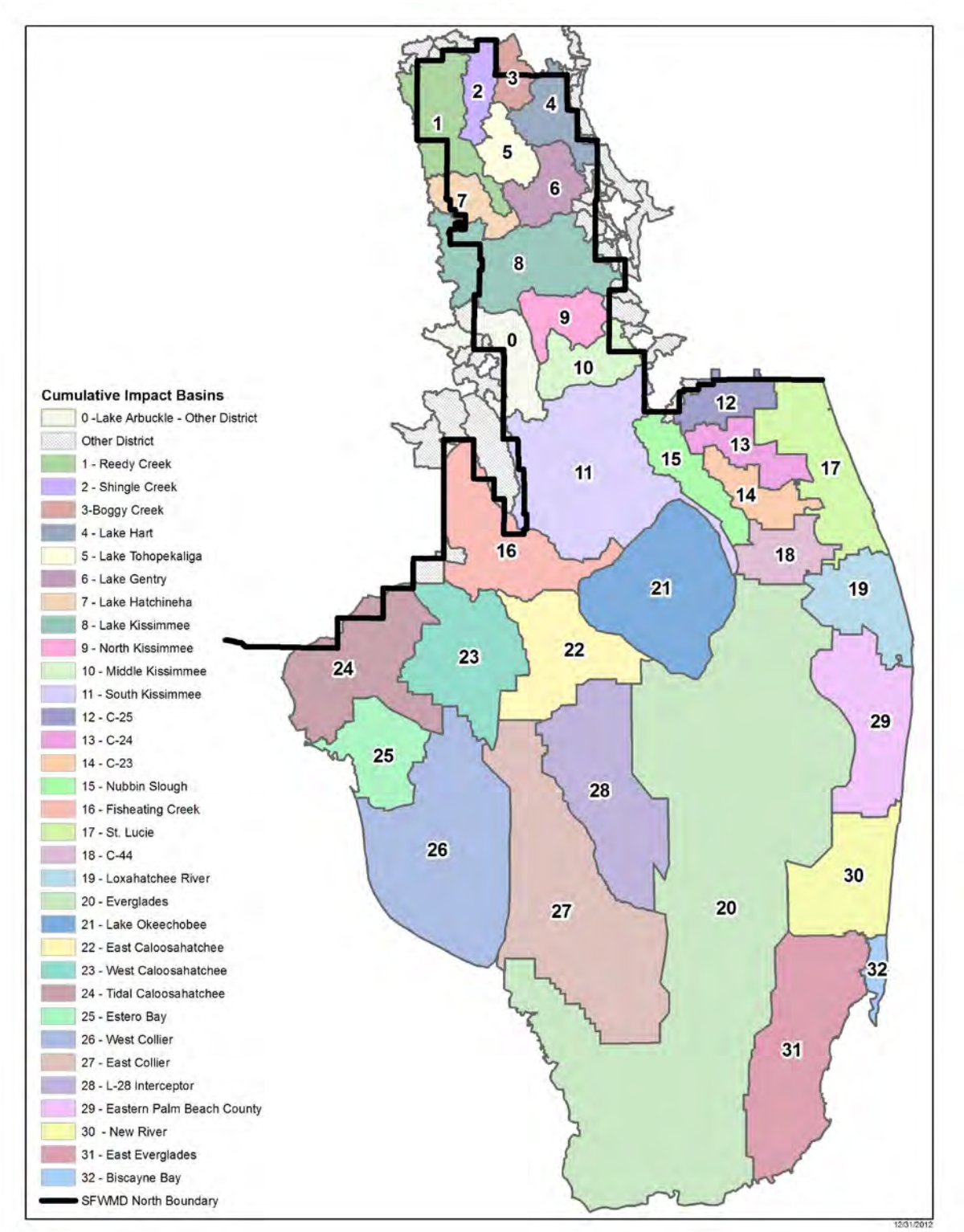


Figure 10.2.8-5 — Drainage Basins within the South Florida Water Management District



(b) Activities that are under review, approved, or vested pursuant to Section 380.06, F.S., or other activities regulated under Part IV of Chapter 373, F.S., which may reasonably be expected to be located within wetlands or other surface waters, in the same drainage basin, based upon the comprehensive plans, adopted pursuant to Chapter 163, F.S., of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations.

Only those activities listed in **sections (a) and (b), above,** that have similar types of impacts (adverse effects) to those that will be caused by the proposed activity will be considered.

The cumulative impact evaluation is conducted using an assumption that reasonably expected future applications with like impacts will be sought, thus necessitating equitable distribution of acceptable impacts among future applications.

10.2.8.1 Cumulative impacts are considered unacceptable when the proposed activity, considered in conjunction with the past, present, and future activities as described in **section 10.2.8, above,** would then result in a violation of state water quality standards as set forth in **section 10.1.1(c)above**, or significant adverse impacts to functions of wetlands or other surface waters identified in **section 10.2.2**, **above**, within the same drainage basin when considering the basin as a whole. This analysis asks the question whether the proposed system, considered in conjunction with past, present, and future activities would be the proverbial "straw that breaks the camel's back regarding the above referenced water quality or wetland and other surface water functions in the basin.

10.2.8.2 Applicants may propose measures such as preservation to prevent cumulative impacts. Such preservation shall comply with the land preservation provisions in **section 10.3.8, below**. If unacceptable cumulative impacts are expected to occur, based on an evaluation conducted in accordance with **section 10.2.8, above**, the applicant may propose mitigation measures as provided for in **sections 10.3 through 10.3.8, below**.

10.3 Mitigation

Mitigation will be approved only after the applicant has complied with the requirements of **sections 10.2.1 through 10.2.1.3, above,** regarding practicable modifications to reduce or eliminate adverse impacts. However, any mitigation proposal submitted for review shall be reviewed concurrently with the analysis of any modification pursuant to **section 10.2, above**. This section establishes criteria to be followed in evaluating mitigation proposals in light of the programmatic and project permitting goal of no net loss of wetland and other surface waters functions.

Mitigation as described in **sections 10.3 through 10.3.8, below,** is required only to offset the adverse impacts to the functions identified in **sections 10.2 through 10.2.8.2, above,** caused by regulated activities. In certain cases, mitigation cannot offset impacts sufficiently to yield a permittable project. Such cases include activities that significantly degrade Outstanding Florida Waters, adversely impact habitat for listed species, or adversely impact those wetlands or other surface waters that are not likely to be successfully recreated.

Applicants are encouraged to consult with Agency staff in pre-application conferences or during the application process to identify appropriate mitigation options.

10.3.1 Types of Mitigation

Mitigation usually consists of restoration, enhancement, creation, or preservation of wetlands, other surface waters, or uplands. Uplands that function as a hydrologic contributing area to wetlands, and are necessary to maintain the ecological value of those wetlands, may be appropriate for mitigation of impacts to wetlands, as well as impacts to uplands that are used by bald eagles, and listed aquatic and wetland dependent species for nesting or denning. The evaluation of the appropriateness of incorporating uplands as part of a mitigation plan shall include consideration of the proximity of uplands to wetlands and the degree to which uplands support the functions of the associated wetlands. In some cases, a combination of mitigation types is the best approach to offset adverse impacts resulting from the regulated activity.

Restoration is usually preferred over creation as it often has a greater chance of success due to soil characteristics, hydrologic regime, landscape position or other factors that favor re-establishment of wetland or other surface water communities. Preservation of important ecosystems can provide an improved level of protection over current regulatory programs when it ensures that the values of the preserved area are protected and maintained in the long term. Areas proposed to be preserved to prevent secondary or cumulative impacts (**sections 10.2.7 and 10.2.8, above**) may also be considered part of a mitigation plan if those areas also serve to offset adverse impacts.

10.3.1.1 In general, mitigation is best accomplished through creation, restoration, enhancement, or preservation of ecological communities similar to those being impacted. However, when the area proposed to be impacted is degraded, compared to its historic ecological community and hydrologic condition, mitigation is best accomplished through creation, restoration, enhancement or preservation of the ecological community that was historically present. When impacts are proposed to wholly artificial systems, such as borrow pits, ditches, and canals, mitigation is best accomplished through creation, restoration, enhancement or preservation of the native ecological community to which it is most analogous in function. For wetlands or other surface waters that have been altered from their native community type, the historic community type at that location shall be used as a reference, unless the alteration has been of such a degree and extent that a different native community type is now present and self sustaining. Mitigation involving other ecological communities is acceptable if impacts are offset and the applicant demonstrates that greater improvement in ecological value will result.

10.3.1.2 Mitigation can be conducted on-site, off-site, or through the purchase of credits from a mitigation bank, or through a combination of approaches, as long as it offsets anticipated adverse impacts to wetlands and other surface waters and meets all other criteria for permit issuance. Off-site mitigation is preferred when:

(a) On-site mitigation opportunities are not expected to have comparable long-term viability due to such factors as unsuitable hydrologic conditions or ecologically incompatible existing adjacent land uses or future land uses identified in a local comprehensive plan adopted according to Chapter 163, F.S.; or

(b) Off-site mitigation will provide greater improvement in ecological value than on-site mitigation.

One example of a project expected to benefit from off-site mitigation is a linear project that cannot effectively implement on-site mitigation due to right-of-way constraints.

10.3.1.2.1 An applicant proposing offsite mitigation must provide reasonable assurance that the permitted mitigation will be conducted by an entity with the financial, legal and administrative capability to implement the mitigation plan in accordance with the terms and conditions of the permit, if issued, pursuant to Rule 62-330.301(1)(j), F.A.C. Compliance with this requirement can be demonstrated when an entity has sufficient ownership interest or control in the land in accordance with **section 4.2.3(d)** of this Volume.

If the applicant demonstrates compliance with this requirement by providing the Agency with a purchase and sale agreement, the permit, if issued, shall be conditioned to prohibit all construction until ownership is transferred to the permittee. This provision does not apply if the applicant proposes to offset adverse impacts to wetlands or other surface waters through the purchase of credits from a mitigation bank, or participation in regional off-site mitigation pursuant to Section 373.4135, F.S., and does not apply to the Florida Department of Transportation when mitigation is accomplished pursuant to Section 373.4137, F.S.

10.3.1.3 Mitigation through participation in a mitigation bank shall be in accordance with Section 373.4136, F.S., and Chapter 62-342, F.A.C. (Mitigation Banks), except that, for purposes of the maps applicable to regional watersheds, the SJRWMD, SWFWMD, and SFWMDs shall use the maps incorporated by reference in the applicable Volume II.

10.3.1.4 In instances where an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards and the activity will contribute to this existing condition, mitigation for water quality impacts can consist of water quality enhancement. In these cases, the applicant must implement mitigation measures that will cause net improvement of the water quality in the receiving waters for those parameters that do not meet standards. (See Section 373.414(1)(b), F.S.)

10.3.1.5 To offset adverse secondary impacts from regulated activities to habitat functions that uplands provide to bald eagles and listed species evaluated as provided in **section 10.2.7(b), above**, mitigation can include the implementation of management plans, participation in a wildlife mitigation park established by the FWC, or other measures. Measures to offset adverse secondary impacts on wetlands and other surface waters resulting from use of a system can include the incorporation of culverts or bridged crossings designed to facilitate wildlife movement, fencing to limit access, reduced speed zones, or other measures designed to offset the secondary impact.

10.3.1.6 Mitigation for certain mining activities shall be in accordance with Section 373.414(6), F.S. Applicants also are advised that they may elect to use the provisions of Chapter 62-348, F.A.C. (Wetland Permitting and Mitigation for the Mining of Peat for the Horticultural Industry), to provide for alternative wetland mitigation associated with the mining of high-quality peat in accordance with Section 373.414(6)(e), F.S.

10.3.1.7 Except as provided in Section 373.414(6), F.S., mitigation or reclamation required or approved by other agencies for a specific project will be acceptable to the Agency to the extent that such mitigation or reclamation fulfills the requirements of **sections 10.3 through 10.3.8,** and offsets adverse impacts of the same project in accordance with the criteria in **sections 10.2 through 10.2.8.2, above**.

10.3.1.8 Innovative mitigation proposals that deviate from the standard practices described in **sections 10.3 through 10.3.6,** shall be considered on a case-by-case basis to determine whether they offset the adverse impacts. Any donation of money as mitigation shall be in accordance with Sections 373.4135(1)(b), F.S., and 373.414(1)(b), F.S.

10.3.2 Guidelines for the Amount of Mitigation

Chapter 62-345, F.A.C., Uniform Mitigation Assessment Method (UMAM), establishes a standardized procedure for assessing functions provided by wetlands and other surface waters, the amount those functions are reduced by proposed impact, and the amount of mitigation needed to offset that impact. The Agency will be responsible for verifying the information provided and applying this assessment method to determine the amount of mitigation necessary to offset the proposed impacts.

Chapter 62-345, F.A.C., also establishes the criteria to award and deduct mitigation bank or regional offsite mitigation area credits. The Agency will be responsible for verifying that information and applying this assessment method to determine the potential amount of mitigation to be provided by the bank or regional offsite mitigation area.

Paragraphs 62-345.100(3), (5), (6), (7), (8), and (9), F.A.C., provide exceptions from the application of UMAM to determine the amount of mitigation necessary to offset adverse impacts.

10.3.3 Mitigation Proposals

10.3.3.1 Applicants shall provide reasonable assurance that proposed mitigation will:

(a) Offset adverse impacts due to regulated activities; and

(b) Achieve mitigation success by providing viable and sustainable ecological and hydrological functions.

The use of credits from a mitigation bank permitted under Part IV of Chapter 373, F.S., or a Regional Offsite Mitigation Area under Section 373.4135, F.S., is not subject to **sections 10.3.3.2 through 10.3.8, below**.

10.3.3.2 Applicants shall submit detailed plans describing proposed construction, establishment, and management of mitigation areas. These plans shall include the following information, as appropriate for the type of mitigation proposed:

(a) A soils map of the mitigation area and other soils information pertinent to the specific mitigation actions proposed;

(b) A topographic map of the mitigation area and adjacent hydrologic contributing and receiving areas;

(c) A hydrologic features map of the mitigation area and adjacent hydrologic contributing and receiving areas;

(d) A description of current hydrologic conditions affecting the mitigation area;

(e) A map of vegetation communities in and around the mitigation area;

(f) Construction drawings detailing proposed topographic alterations and all structural components associated with proposed activities;

(g) Proposed construction activities, including a detailed schedule for implementation;

(h) A vegetation-planting scheme if planting is proposed, and schedule for implementation;

(i) Sources of plants and soils used in wetland creation or restoration;

(j) Measures to be implemented during and after construction to avoid adverse impacts related to proposed activities;

(k) A management plan comprising all aspects of operation and maintenance, including water management practices, vegetation establishment, exotic and nuisance species control, fire management, and control of access;

(l) A proposed monitoring plan to demonstrate mitigation success;

(m) A description of the activities proposed to control exotic and nuisance species should these become established in the mitigation area. The mitigation proposal must include reasonable measures to assure that these species do not invade the mitigation area in such numbers as to affect the likelihood of success of the project;

(n) A description of anticipated site conditions in and around the mitigation area after the mitigation plan is successfully implemented;

(o) A comparison of current fish and wildlife habitat to expected habitat after the mitigation plan is successfully implemented;

(p) For mitigation plans with projected implementation costs in excess of $25,000, an itemized estimate of the cost of implementing mitigation as set forth in **section 10.3.7.7, below**;

(q) Evidence that the applicant has legal access to the mitigation area and authority to perform the mitigation, and documentation granting the Agency a right of legal access to the mitigation area and the authority to conduct the mitigation should the applicant fail to do so; and

(r) Any additional necessary supporting information required by Chapter 62-345, F.A.C.

10.3.4 Monitoring Requirements for Mitigation Areas

If applicable, applicants shall monitor the progress of mitigation areas until success can be demonstrated as provided in **section 10.3.6, below**. Monitoring parameters, methods, schedules, and reporting requirements will be specified in permit conditions.

10.3.5 Protection of Mitigation Areas

Applicants shall propose and be responsible for implementing methods that assure that mitigation areas will not be adversely impacted by incidental encroachment or secondary activities that might compromise mitigation success or long-term viability.

10.3.6 Mitigation Success

Mitigation success will be measured in terms of whether the objectives of the mitigation are expected to be realized. The success criteria to be included in permit conditions will specify the minimum requirements necessary to attain a determination of success. The mitigation shall be deemed successful by the Agency when all applicable water quality standards are met, the mitigation area has achieved viable and sustainable ecological and hydrological functions and the specific success criteria contained in the permit are met. If success is not achieved within the time frame specified within the permit, remedial measures shall be required. Monitoring requirements shall remain in effect until success is achieved as specified in the permit. Maintenance requirements shall remain in effect as specified in the permit.

10.3.7 Financial Responsibility for Mitigation.

As part of compliance with paragraph 62-330.301(1)(j), F.A.C., where an applicant proposes mitigation, the applicant shall provide proof of financial responsibility to:

(a) Conduct the mitigation activities;

(b) Conduct any necessary management of the mitigation site;

(c) Conduct monitoring of the mitigation;

(d) Prepare and submit monitoring reports to the Agency; and

(e) Conduct any necessary corrective action indicated by the monitoring.

10.3.7.1 Applicants not subject to financial responsibility requirements.

The following applicants shall not be subject to the financial responsibility requirements in **sections 10.3.7 through 10.3.7.9**:

(a) Applicants whose mitigation is deemed successful pursuant to **section 10.3.6, above,** prior to undertaking the construction activities authorized under the permit issued pursuant to Part IV, Chapter 373, F.S.

(b) Applicants whose mitigation is estimated to cost less than $25,000.

(c) Federal, state, county and municipal governments, state political subdivisions, investor-owned utilities regulated by the Florida Public Service Commission and rural electric cooperative.

(d) Mitigation banks that comply with the financial responsibility provisions of Rule 62-342.700, F.A.C.

10.3.7.2 Amount of financial responsibility.

The amount of financial responsibility provided by the applicant shall be in an amount equal to 110 percent of the cost estimate determined pursuant to **section 10.3.7.7, below**, for each phase of the mitigation plan submitted under the requirements of **sections 10.3 through 10.3.8**, and under the requirements of Section 373.414(19)(a), F.S., when mitigation is required for the extraction of limestone and phosphate.

10.3.7.3 Documentation.

The permit applicant shall provide draft documentation of the required financial responsibility mechanism described below with the permit application, and shall submit to the Agency the executed or finalized documentation within the time frames specified in the permit.

10.3.7.4 General Terms for Financial Responsibility Mechanisms.

In addition to the specific provisions regarding financial responsibility mechanisms set forth in **section 10.3.7.6, below**, the following, as they relate to the specific mechanism proposed, shall be complied with:

(a) The form and content of all financial responsibility mechanisms shall be approved by the Agency. Forms that have been developed for this purpose are incorporated by reference in subsection 62-330.301(5), F.A.C., as Forms 62-330.301(5)(a) through (f). The applicant must provide the applicable form or one that is in substantial conformance with that form; any changes must be noted on the face of the form and identified to the Agency for review and approval.

(b) The financial mechanisms shall name the Agency as sole beneficiary or shall be payable solely to the Agency. If the financial mechanism is of a type that is retained by the beneficiary according to industry standards, the original financial responsibility mechanism shall be retained by the Agency.

(c) The financial responsibility mechanisms shall be established with a regulated state or national bank, savings and loan association, or other financial institution, licensed in this state. In the case of letters of credit, the letter of credit must be issued by an entity that has authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. In the case of a surety bond, the surety bond must be issued by a surety company registered with the state of Florida.

(d) The financial responsibility mechanisms shall be effective on or prior to the date that the activity authorized by the permit commences and shall continue to be effective through the date of notification of final release by the Agency in accordance with **section 10.3.7.7.2 below**.

(e) The financial responsibility mechanisms shall provide that they cannot be revoked, terminated or cancelled without first providing an alternative financial responsibility mechanism that meets the requirements of **sections 10.3.7 through 10.3.7.9**. Financial mechanisms shall provide that they cannot be revoked, terminated, or cancelled without a 120-day notice to the Agency. Within 90 days of receipt by the permittee of actual or constructive notice of revocation, termination or cancellation of a financial responsibility mechanism or other actual or constructive notice of cancellation, the permittee shall provide such an alternate financial responsibility mechanism.

(f) When mitigation is required for the extraction of limestone and phosphate the financial responsibility mechanism must meet the criteria of Section 373.414(19)(a), F.S.

10.3.7.5 If the permittee fails to comply with the terms and conditions of the permit, including any mitigation requirement, **section 10.3.7,** such failure shall be deemed a violation of Chapter 62-330, F.A.C., and the permit issued thereunder. In addition to any other remedies for such

violation available to it, the Agency may make demand upon the financial mechanism. Notice of intent to make demand shall be as provided in the mechanism or, if in none, upon reasonable notice.

10.3.7.6 Financial Responsibility Mechanisms.

Financial responsibility for the mitigation, monitoring and corrective action for each phase of the project may be established by any of the following methods, at the discretion of the applicant:

(a) Performance bond; when issued in favor of DEP, the applicant shall also establish a standby trust fund agreement;

(b) Irrevocable letter of credit; when issued in favor of DEP, the applicant shall also establish a standby trust fund agreement;

(c) Trust fund agreement;

(d) Deposit of cash or cash equivalent into an escrow account at a regulated financial institution or at the Florida Department of Financial Services; and

(e) Guarantee bond.

10.3.7.7 Cost estimates.

For the purposes of determining the amount of financial responsibility that is required by this subsection, the applicant shall submit a detailed written estimate, in current dollars, of the total cost of conducting the mitigation, including any maintenance and monitoring activities, and the applicant shall comply with the following:

(a) The cost estimate for conducting the mitigation and monitoring shall include all associated costs for each phase thereof, including earthmoving, planting, structure installation, maintaining and operating any structures, controlling nuisance or exotic species, fire management, consultant fees, monitoring activities and reports.

(b) The applicant shall submit the estimates, together with verifiable documentation, to the Agency along with the draft of the financial responsibility mechanism.

(c) The costs shall be estimated based on a third party performing the work and supplying materials at the fair market value of the services and materials. The source of any cost estimates shall be indicated.

10.3.7.7.1 Partial Releases.

The permittee may request the Agency to release portions of the financial responsibility mechanism as parts of the mitigation plan, such as earth moving, construction, or other activities for which cost estimates were submitted in accordance with **section 10.3.7.7**, are successfully completed. The request shall be in writing and include documentation that the activities have been completed and have been paid for or will be paid for upon release of the applicable portion of the financial responsibility mechanism and a revised cost estimate for the completion of the mitigation activities. The Agency shall authorize the release, or shall request the applicable

financial institution release, of the portion requested upon verification that the activities have been completed in accordance with the mitigation plans.

10.3.7.7.2 Final Release.

Within thirty (30) days of the Agency determining that the mitigation is successful in accordance with **section 10.3.6, above**, the Agency shall so notify the permittee and shall authorize the return and release of all funds held or give written authorization to the appropriate third party for the cancellation or termination of the financial responsibility mechanism.

10.3.7.8 Financial Responsibility Conditions.

For applicants subject to the financial responsibility of **sections 10.3.7 through 10.3.7.9,** the Agency will include the following conditions in the permit:

(a) A permittee must notify the Agency by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the permittee as debtor within 10 business days after the commencement of the proceeding.

(b) A permittee who fulfills the requirements of **sections 10.3.7 through 10.3.7.9,** by obtaining a letter of credit or performance bond will be deemed to be without the required financial assurance in the event of bankruptcy, insolvency or suspension or revocation of the license or charter of the issuing institution. The permittee must reestablish in accordance with **sections 10.3.7 through 10.3.7.9,** a financial responsibility mechanism within 60 days after such event.

(c) When transferring a permit, the new owner or person with legal control shall submit documentation to satisfy the financial responsibility requirements of **sections 10.3.7 through 10.3.7.9**. The prior owner or person with legal control of the project shall continue the financial responsibility mechanism until the Agency has approved the permit transfer and substitute financial responsibility mechanism.

10.3.7.9 Financial Responsibility Mechanisms for Multiple Projects.

An applicant may use a mechanism specified in **section 10.3.7.6, above** to meet the financial responsibility requirement for multiple projects. The financial responsibility mechanism must include a list of projects, the amount of funds assured for each project, and limit the amount of funds available for each project. The mechanism must be no less than the sum of the funds that would be necessary in accordance with **section 10.3.7.2, above**, as if separate mechanisms had been established for each project. As additional permits are issued that require mitigation, the amount of the financial responsibility mechanism may be increased in accordance with **section 10.3.7.2, above,** and the project added to the list.

10.3.8 Real property conveyances.

(a) All conservation easements, deed restrictions, and restrictive covenants accepted for mitigation purposes shall be granted in perpetuity without encumbrances, unless such encumbrances do not adversely affect the ecological viability of the mitigation. All liens and mortgages shall be released or subordinated to the conservation easement. All

conservation easements shall be consistent with Section 704.06, F.S., and shall contain restrictions that ensure the ecological viability of the site.

(b) All real property conveyances shall be in fee simple and by statutory warranty deed, special warranty deed, or other deed, without encumbrances that adversely affect the integrity of the preservation. The Agency shall also accept a quit claim deed if necessary to aid in clearing minor title defects or otherwise resolving boundary questions.

(c) The use of the applicable Form 62-330.301(8) through 62-330.301(17) shall constitute consistency with Section 704.06, F.S. **Where the applicant demonstrates that project specific conditions necessitate deviation from language of the accepted forms, alternative language shall be accepted** provided that it meets the provisions of Section 704.06, F.S. and **section 10. 3. 8** of this Volume. Each of these forms are in **Appendix C** of this Volume, and a copy of the form may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C.

PART IV -- EROSION AND SEDIMENT CONTROL

11.0 Erosion and Sediment Control

11.1 Overview

Uncontrolled erosion and sediment from land development activities can result in costly damage to aquatic areas and to both private and public lands. Excessive sediment blocks stormwater conveyance systems, plugs culverts, fills navigable channels, impairs fish spawning, clogs the gills of fish and invertebrates, and suppresses aquatic life.

A plan for minimizing erosion and controlling sediment through the implementation of best management practices (BMPs) must be included with the application for a permit. In addition to the "erosion and sediment control plan" required by **section 11.2**, all projects that disturb one or more acre of land that discharge to waters or a permitted Municipal Separate Stormwater Sewer System (MS4) also will need to develop and implement a Stormwater Pollution Prevention Plan (SWPPP) to obtain coverage under Florida's NPDES Stormwater Construction Generic Permit. Therefore, applicants are advised to comply with the erosion and sediment control requirements in **section 11.3.1**, **below**.

An effective sediment and erosion control plan is essential for controlling stormwater pollution during construction. An erosion and sediment control plan is a site-specific plan that specifies the location, installation, and maintenance of best management practices to prevent and control erosion and sediment loss at a construction site. The plan is submitted as part of the permit application and must be clearly shown on the construction plans for the development. Erosion and sediment control plans range from very simple for small, single-phase developments to complex for large, multiple phased projects. If, because of unforeseen circumstances such as extreme rainfall events or construction delays, the proposed erosion and sedimentation controls no longer provide reasonable assurance that water quality standards will not be violated, additional erosion and sediment control measures shall be required that must be designed and implemented to prevent violations of water quality standards.

11.1.1 Erosion and Sediment Control Requirements

Erosion and sediment control BMPs shall be used as necessary during construction to **retain sediment on-site and assure that any discharges from the site do not cause or contribute to a violation of state water quality standards**. These management practices must be designed according to specific site conditions and shall be shown or clearly referenced on the construction plans for the development. At a minimum, the erosion and sediment control requirements described in this section shall be followed during construction of the project. Additional measures are required if necessary to protect wetlands or prevent off-site flooding. All appropriate contractors must be furnished with the information pertaining to the implementation, operation, and maintenance of the erosion and sediment control plan. In addition, sediment accumulation in the stormwater system from construction activities must be removed prior to final certification of the system to ensure that the designed and permitted storage volume is available.

11.1.2 Erosion and Sediment Control Principles

Factors that influence erosion potential include soil characteristics, vegetative cover, topography, climatic conditions, timing of construction, and the areal extent of land clearing activities. The

following principles must be considered in planning and undertaking construction and alteration of systems:

(a) Plan the development to fit topography, soils, drainage patterns, and vegetation;

(b) Minimize both the extent of area exposed at one time and the duration of exposure;

(c) Schedule activities during the dry season or during dry periods whenever possible to reduce the erosion potential;

(d) Apply erosion control practices to minimize erosion from disturbed areas;

(e) Apply perimeter controls to protect disturbed areas from off-site runoff and to trap eroded material on-site to prevent sedimentation in downstream areas;

(f) Keep runoff velocities low and retain runoff on-site;

(g) Stabilize disturbed areas immediately after final grade has been attained or during interim periods of inactivity resulting from construction delays; and

(h) Implement a thorough maintenance and follow-up program.

These principles are usually integrated into a system of vegetative and structural measures, along with other management techniques, that are included in an erosion and sediment control plan to minimize erosion and control movement of sediment. In most cases, a combination of limited clearing and grading, limited time of exposure, and a judicious selection of erosion control practices and sediment trapping systems will prove to be the most practical method of controlling erosion and the associated production and transport of sediment. Permit applicants, system designers, and contractors can refer to the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual (June 2007)* and the *Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual (FDEP July 2008)*, for further information on erosion and sediment control. These manuals provide guidance for the planning, design, construction, and maintenance of erosion and sediment control practices. Both of these manuals are incorporated by reference in subparagraph 62-330.050(9)(b)5., F.A.C.

11.2 Development of an Erosion and Sediment Control Plan

An erosion and sediment control plan must be submitted as part of the application as a way of providing reasonable assurance that water quality standards will not be violated during the construction phase of a project. The plan must identify the location, relative timing, and specifications for all erosion and sediment control and stabilization measures that will be implemented as part of the project's construction. The plan must provide for compliance with the terms and schedule of implementing the proposed project, beginning with the initiation of construction activities. The plan may be submitted as a separate document, or may be contained as part of the plans and specifications of the construction documents.

11.3 Development of a Stormwater Pollution Prevention Plan (SWPPP) for NPDES Requirements

Although the requirement to develop and submit an SWPPP under a National Pollution Discharge Elimination System (NPDES) permit is not a requirement for a permit under Chapter 62-330,

F.A.C., applicants are advised that preparation and adherence to a SWPPP is required where the permitted activity also requires an NPDES construction permit pursuant to subsection 62-621.300(4), F.A.C. Namely, **those construction activities resulting in greater than one acre of soil disturbance discharging to waters of the state or a permitted MS4 must also apply for and receive coverage from DEP under Florida's NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) before disturbing the soil.** This section of the Handbook is provided to help the design community develop a comprehensive erosion and sediment control plan that satisfies all state requirements and avoid having to revise the plan for the CGP and its associated SWPPP. For purposes **sections 11.3.1 through 11.4, below,** references to the term "applicant" shall mean an applicant for the NPDES permit.

11.3.1 Additional Requirements of the Construction Generic Permit

(a) The following non-stormwater discharges are prohibited:

1. Wastewater from washout of concrete;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

3. Fuels, oils, or other pollutants associated with vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle or equipment washing or cleaning.

(b) Pollution Prevention Controls. The applicant must provide for the design, installation, implementation, and maintenance of effective pollution prevention measures to accomplish all of the following:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Treat wash waters using a treatment system so that they do not cause or contribute to violations of water quality standards;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater;

3. Minimize the discharge of pollutants from spills and leaks; and implement chemical spill and leak prevention and response procedures;

4. Control wastes, such as discarded building materials, chemicals, litter, and sanitary waste, in accordance with all applicable state, local, and federal regulations;

5. Follow all applicable State and local waste disposal, sanitary sewer, and septic system regulations;

6. Use proper application rates and methods for fertilizers, herbicides, and pesticides. Set forth how these procedures will be implemented and enforced. Apply nutrients only at rates necessary to establish and maintain vegetation and

consistent with all labeling requirements; and

7. Limit the application, generation, and migration of toxic substances; and properly store and dispose of toxic materials.

(c) Erosion and Sediment Controls. The applicant must provide for the design, installation, implementation, and maintenance of appropriate erosion and sediment controls to accomplish all of the following:

1. Control stormwater volume and velocity within the site to minimize soil erosion;

2. Control stormwater peak discharge rates and volume to minimize erosion at discharge outfalls and to minimize downstream channel and streambank erosion;

3. Minimize the amount of soil exposed during the construction activity;

4. Minimize the disturbance of steep slopes;

5. Minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls shall address factors such as the amount, frequency, intensity, and duration of precipitation; the nature of the resulting stormwater; and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Minimize off-site vehicle tracking of sediments onto paved surfaces and the generation of dust. If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts;

7. Where feasible, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration and to provide and maintain natural buffers adjacent to surface waters of the state; and

8. Minimize soil compaction and preserve topsoil.

(d) Sediment Basins

1. For drainage basins with 10 or more disturbed acres at one time, a temporary (or permanent) sediment or wet detention basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage basins with 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, a combination of smaller sediment basins, sediment traps, wet detention systems, and/or other BMPs shall be used. At a minimum, silt fences or equivalent sediment controls are required for all side slope and downslope boundaries of the construction area.

2. For drainage basins of less than 10 acres, sediment basins and/or sediment traps are recommended but not required. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

3. Areas that will be used for permanent stormwater infiltration treatment (e.g., stormwater retention basins) shall not be used for temporary sediment basins unless appropriate measures are taken to assure removal of accumulated fine sediments, to avoid excessive compaction of soils by construction machinery or equipment, and to ensure that the design and permitted infiltration rate is achieved.

(e) Maintenance Requirements

The plan shall include a description of procedures that will be followed to ensure the timely maintenance of vegetation, erosion and sediment controls, stormwater management practices, and other protective measures and BMPs so they will remain in good and effective operating condition.

(f) Inspections

An inspector qualified in accordance with Part II.12. of DEP Document No. 62-621.300(4)(a), effective February 17, 2009, incorporated by reference in paragraph 62-621.300(4)(a), F.A.C., (provided by the owner or operator) shall perform all required site inspections. Site inspections must include all points of discharge into surface waters or an MS4; disturbed areas of the construction site that have not been finally stabilized; areas used for storage of materials that are exposed to precipitation; structural controls; and locations where vehicles enter or exit the site. Site inspections shall be conducted at least once every seven calendar days and within 24 hours of the end of a storm that is 0.50 inches or greater. Inspections shall include:

1. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the stormwater system. The stormwater management system and erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Discharge locations or points shall be inspected to ascertain whether erosion and sediment control and stormwater treatment measures are effective in preventing or minimizing the discharge of pollutants, including retaining sediment onsite pursuant to Rule 62-40.432, F.A.C. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

2. Based on the results of the inspection, all maintenance operations needed to assure proper operation of all controls, BMPs, practices, or measures identified in the stormwater pollution prevention plan shall be done in a timely manner, but in no case later than 7 calendar days following the inspection. If needed, pollution prevention controls, BMPs, and measures identified in the plan shall be revised as necessary to assure proper operation of all controls, BMPs, practices, or measures identified in the stormwater pollution prevention plan. Such revisions shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

3. A report summarizing the scope of the inspection; name(s) and qualifications of personnel making the inspection; the date(s) of the inspection; rainfall data; major observations relating to the implementation of the stormwater pollution prevention plan; and actions taken in accordance with the requirements of this permit, shall be made and retained as part of the stormwater pollution prevention plan. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the stormwater pollution prevention plan and the Generic Permit for Stormwater Discharge from Large and Small Construction Activities.

11.4 Sediment Sump Design Example

Example calculations for designing a sediment sump are provided in Section 3 of the "References and Design Aids" for Volume I, available at [http://www.dep.state.fl.us/water/wetlands/erp/forms.htm].

PART V – OPERATION AND MAINTENANCE-SPECIFIC REQUIREMENTS

12.0 Operation and Maintenance Requirements

12.1 Responsibilities

(a) In accordance with Rule 62-330.310, F.A.C., and except as provided in **section 12.1.1, below,** upon completion of a project constructed in conformance with an individual permit issued under Part IV of Chapter 373, F.S., the permit must be converted from the construction phase to an operation and maintenance phase.

(b) Responsibility for operation and maintenance of a regulated activity shall be an obligation in perpetuity as provided in Rule 62-330.310, F.A.C. Such entity or entities must have the financial, legal, and administrative capability to perform operation and maintenance in accordance with Agency rules and permit conditions.

(c) Conversion of a permit from the construction to the operation and maintenance phase shall follow the procedures in Rule 62-330.310, F.A.C., and **section 12.2, below.**

12.1.1 Exceptions

The operation phase of mining projects subject to the land reclamation requirements of Chapter 378, F.S., and that are used solely for and by the mine during its life shall be allowed to terminate, without the need to apply for abandonment of the permit, after the mine, or its subunits has met the requirements described in the applicable paragraph 62-330.310(7)(a) or (b), F.A.C.

12.2 Procedures for Requesting Conversion from the Construction Phase to the Operation and Maintenance Phase

(a) Automatic Conversion — In accordance with subsection 62-330.310(5), F.A.C., projects authorized in a General Permit shall automatically convert to an operation and maintenance phase upon completion of the permitted activities in conformance with all the terms and conditions of the permit.

(b) Projects that serve an individual, private single family dwelling unit, duplex, triplex, or quadruplex that are not part of a larger plan of common development proposed by an applicant — Upon receipt of a completed Form 62-330.310(3), "Construction Completion and Inspection Certification for Activities Associated with a Private Single-Family Dwelling Unit," the construction phase of the permit shall automatically convert to the operation and maintenance phase. However, if at any time the Agency determines that such an activity was not built in conformance with the terms and conditions of the permit, the permittee shall be subject to enforcement by the Agency and for all measures required to bring the activity into compliance with the permit.

(c) For projects other than those specified in **sections 12.1.1, 12.2(a), and 12.2(b), above** — Submittal of Form 62-330.310(1) "As-Built Certification and Request for Conversion to Operation Phase," in accordance with subparagraph 62-330.350(1)(f)2., F.A.C., shall serve to notify the Agency that the project, or independent portion of the project, is completed (other than long-term monitoring and any mitigation that will require additional time after construction or alteration to achieve the success criteria specified in the permit) and ready for inspection by the Agency.

1. Projects not requiring certification by a registered professional shall be certified by the permittee or their authorized agent. Projects designed by a registered professional shall be certified by a registered professional, unless exempted by law.

2. The person completing Form 62-330.310(1) shall inform the Agency if there are substantial deviations from the plans approved as part of the permit and include as-built drawings with the form.

   The plans must be clearly labeled as "as-built" or "record" drawings and shall consist of the permitted drawings that clearly highlight (such as through "red lines" or "clouds") any substantial deviations made during construction. The permittee shall be responsible for correcting the deviations [as verified by a new certification using Form 62-330.310(1)]. If such deviations require a modification of the permit under Rule 62-330.315, F.A.C., the permittee shall separately request a modification to the permit, which must be issued by the Agency prior to the Agency approving the request to convert.

3. The person certifying compliance with the permit shall submit documentary evidence of satisfaction of all permit conditions, other than long term monitoring and inspection requirements, along with Form 62-330.310(1).

(d) When projects authorized by a permit under this chapter are to be constructed in phases, each phase or independent portion of the permitted project must be completed and the Permittee must have submitted Form 62-330.310(1) "As-Built Certification and Request for Conversion to Operation Phase," in accordance with subparagraph 62-330.350(1)(f)2., F.A.C., certifying as to such completion prior to the use of that phase or independent portion of the project. The request for conversion to the operating phase for any phase or independent portion of the permitted project shall occur before construction of any future work that may rely on that infrastructure for conveyance and water quality treatment and attenuation. Phased construction can include a partial certification.

(e) Within 60 days of receiving Form 62-330.310(1), the Agency shall approve the request, or will notify the permittee of any deficiencies that must be corrected prior to conversion to the operation and maintenance phase. If the Agency fails to take action on the request to convert the permit or notify the permittee of deficiencies, the conversion to operation and maintenance shall be deemed approved.

(f) If the Agency notifies the permittee of deficiencies that must be corrected, and if the permittee fails to correct those deficiencies in a timely manner, the project will be considered to be not operating in accordance with a permit issued under Chapter 62-330, F.A.C., and the permittee will be subject to enforcement action by the Agency. In such case, the permittee will be responsible for any necessary permit modifications, alterations, or maintenance to bring the project into such compliance, and for submitting any new certifications and requests to convert the permit to the operation and maintenance phase as provided in this section.

12.2.1 Transfer to the perpetual operation and maintenance entity

(a) If the permittee is also the operation and maintenance entity, once the activity has been converted to the operation phase as described in **section 12.2, above,** no other action is required under this section.

(b) In accordance with subparagraph 62-330.350(1)(g)2., F.A.C., if the permittee is not also the operation and maintenance entity, a completed Form 62-330.310(2), "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" must be submitted to transfer the permit to the operation and maintenance entity. If the transfer is to the entity identified in the permit, the submittal of the form does not require a processing fee, and the review shall not require processing as a permit modification under Rule 62-330.315, F.A.C. The form must be signed by a person authorized to represent the operation and maintenance entity, and shall be submitted along with the following, as applicable:

1. A copy of the recorded transfer of title to the operation and maintenance entity for the common areas on which the stormwater management system , or other permitted works are located (unless dedicated by plat),

2. A copy of all recorded plats,

3. Copies of recorded declaration of covenants and restrictions, amendments, and associated exhibits, and

4. A copy of the filed articles of incorporation and documentary evidence of the operation and maintenance entity's active corporate status with the Department of State, Division of Corporations, if the entity is a corporation.

(c) Documents that require recordation in the public records must be recorded in the county where the project is located prior to any lot or unit sales within the project served by the system or work, or upon completion of construction of the system or work, whichever occurs first.

(d) Within 60 days of receiving a complete request to transfer the permit to the operation and maintenance entity, the Agency shall approve the request, or will notify the permittee that the documentation is insufficient to demonstrate compliance with **Section 12.3, below,** and permit conditions. The permittee shall remain liable until the permit is transferred to the operation and maintenance entity by the Agency. If the Agency fails to take action or notify the permittee of the insufficiencies within 60 days of the request, the transfer shall be deemed approved if the permit has already been certified and converted to the operation phase.

(e) If a permit modification is required to allow for a new entity or multiple entities to operate and maintain the project, the 60-day time period for Agency action shall not commence until the permit modification is issued.

12.3 Operation and Maintenance Entities

12.3.1 An acceptable operation and maintenance entity must have the legal ability to access, monitor, operate and maintain the permitted project. Typically, this is accomplished through ownership or control of all property on which the permitted project is located by one of the entities listed below. However, alternative methods of achieving the legal requirements necessary for operation and

maintenance will be considered by the Agency. Drainage easements, cross drainage agreements or similar documents may be required for connected systems or systems with common infrastructure to be operated by different entities.

The following entities are acceptable for ensuring that an activity will be operated and maintained in compliance with the requirements of Section 373.416(2), F.A.C., and Chapter 62-330, F.A.C.:

(a) Local government units, including counties and municipalities, Municipal Service Taxing Units, or special taxing units;

(b) Active water control districts created pursuant to Chapter 298, F.S., drainage districts created by special act, special districts defined in Chapter 189, F.S., Community Development Districts created pursuant to Chapter 190, F.S., Special Assessment Districts created pursuant to Chapter 170, F.S., or water management districts created pursuant to Chapter 373, F.S.;

(c) State or federal agencies;

(d) Duly constituted communication, water, sewer, stormwater, electrical, or other public utilities;

(e) Construction permittees, subject to the restrictions below; or

(f) Non-profit corporations, including homeowners' associations, property owners' associations, condominium owners' or master associations, subject to the restrictions below.

12.3.2 A construction permittee is an acceptable operation and maintenance entity, provided the property on which all of the permitted project is located will continue to be owned or controlled by the construction permittee. When a permittee intends to convey the property to a third party, the permittee will be an approved operation and maintenance entity from the time construction begins until the system is transferred to the established legal entity approved by the Agency. If a permittee intends to convey or transfer any portion of the property on which the permitted project is located, the permittee may continue to be the long-term operation and maintenance entity only if appropriate drainage easements, cross drainage agreements or similar documents that provide the entity with the legal capability and authority to operate and maintain the permitted project is approved as part of the permit application, are recorded in the official records of the applicable county, and are in effect prior to any conveyance or transfer of the property or conversion of the permit to the operation and maintenance phase, whichever occurs first. Where the property is leased or rented to a third party, the property owner shall continue to be the responsible operation and maintenance entity.

12.3.3 Homeowners' associations, property owners' associations, and condominium owners' or master associations are acceptable operation and maintenance entities only if they have the financial, legal, and administrative capability to provide for the long term operation and maintenance of the project. Accordingly, such entities must:

(a) Submit, as part of the permit application, draft Articles of Incorporation, Declaration, Restrictive Covenants, Deed Restrictions or other organizational and operation documents, or draft amendments thereto, that affirmatively assign responsibility to the Association for the operation or maintenance of the project. Model language for Declaration and Restrictive Covenants is included in section 7 of the "References and Design Aids" for Volume I. The

Association documents must comply with Chapters 617, 718, 719, and 720, F.S., as applicable.

(b) Have sufficient powers (reflected in governing documents where applicable), to:

1. Own and convey property;

2. Operate and perform maintenance of the permitted project on common property as exempted or permitted by the Agency;

3. Establish rules and regulations governing membership or take any other actions necessary for the purposes for which the corporation or association was organized;

4. Assess members for the cost of operating and maintaining the common property, including the stormwater management system, and enforce the collection of such assessments;

5. Sue and be sued;

6. Contract for services to provide for operation and maintenance (if the association contemplates employing a maintenance company);

7. Require all owners of real property or units to be members of the corporation or association; and

8. Demonstrate that the land on which the system is located is owned or otherwise controlled by the corporation or association to the extent necessary to operate and maintain the system or convey operation and maintenance to another entity.

(c) Have the following covenants and restrictions, set forth in the Declaration of Restrictive Covenants, Deed Restrictions, Declaration of Condominium, or other recorded document setting forth the Association's rules and regulations:

1. That it is the responsibility of the Association to operate and maintain the system;

2. The system is owned by the Association or described therein as common property;

3. That there is a method of assessing and collecting the assessment for operation and maintenance of the system;

4. That any proposed amendment to the Association's documents affecting the system (including environmental conservation areas and the water management portions of the common areas) must be submitted to the Agency for a determination of whether the amendment necessitates a modification of the environmental resource permit. If a modification is necessary, the Agency will so advise the permittee. The amendment affecting the system may not be finalized until any necessary permit modification is approved by the Agency or the Association is advised that a modification is not necessary;

5. That the governing provisions of the Association must be in effect for at least 20 years with automatic renewal periods thereafter;

6. That the Association shall exist in perpetuity. However, should the Association dissolve, the operational documents shall provide that the system shall be transferred to and maintained by one of the entities identified in **sections 12.3.1(a) through (f), above**, who has the powers listed in **section 12.3.3(b)1. through 8., above**, the covenants and restrictions required in **section 12.3.3(c)1. through 9., herein**, and the ability to accept responsibility for the operation and maintenance of the system described in **section 12.3.3(d)1. or 2, below**;

7. If wetland mitigation monitoring is required by the permit and the operational entity will be responsible to carry out this obligation, the rules and regulations of the Association shall state that it will be the Association's responsibility to complete the task successfully, including meeting all conditions associated with mitigation maintenance and monitoring;

8. The Agency has the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel it to correct any outstanding problems with the system facilities or in mitigation or conservation areas under the responsibility or control of the Association; and

9. A "Recorded Notice of Environmental Resource Permit," Form No. 62-330.090(1), shall be recorded in the public records of the County(s) where the project is located. The Registered Agent for the Association shall maintain copies of all permitting actions for the benefit of the Association.

(d) Have the ability to accept responsibility for the operation and maintenance of the system:

1. For future phases of the project, if the operation and maintenance entity is proposed for a project that will be constructed in phases, and subsequent phases will utilize the same system as the initial phase or phases; or

2. Have, either separately or collectively, the responsibility and authority to operate and perform maintenance of the system for the entire project area, if the development scheme contemplates independent operation and maintenance entities for different phases, and the system is integrated throughout the project. That authority must include cross easements for surface water management and the ability to enter and maintain the various portions of the system, should any sub-entity fail to maintain a portion of the system within the project area.

12.4 Minimum Operation and Maintenance Standards

(a) In accordance with Section 373.416(2), F.S., unless revoked or abandoned, all stormwater management systems, dams, impoundments, reservoirs, appurtenant works, or works permitted under Part IV of Chapter 373, F.S., must be operated and maintained in perpetuity. The operation and maintenance shall be in accordance with the designs, plans, calculations, and other specifications that are submitted with an application, approved by the Agency, and incorporated as a condition into any permit issued.

(b) Upon completion of the permitted stormwater management systems, dams, reservoirs, impoundments, appurtenant work, or works, the Agency shall have periodic inspections made to ensure the project was constructed and is being operated in compliance with the

terms and conditions of the permit, and in a manner that protects 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 District or DEP who requests entry for purposes of such inspection and presents appropriate credentials.

(c) Inspections may be performed by Agency staff during and after construction. When needed to ensure a project is being operated and maintained in perpetuity, the permit may require the operation and maintenance entity to conduct the periodic inspections. The required inspection schedule for a specific project will be specified in the permit.

(d) Some projects **that do not consist of or include a stormwater management system, dam, impoundment, reservoir, or appurtenant work,** whether designed by a registered professional or not, also may be required in the permit to be regularly inspected and monitored to ensure continued compliance with permit conditions and the functioning of the project. This may include individual permits issued for activities at a private residential single-family residence. For example, a residential fill pad may have been permitted with specific requirements for slope drainage or runoff. A dock located in waters with sensitive resources may have been permitted with conditions prohibiting mooring in certain locations, limiting the number or size of boats to be moored at the dock, or with requirements for handrailing or other associated structures. The permit will specify the periodic inspections that will be required, and how the results of the inspections are to be either retained by the permittee or reported to the Agency. Examples where monitoring and reporting by such persons may be required for such activities are:

The following are examples of activities as discussed above that are subject to an initial inspection prior to conversion to the operation phase, and then subject to routine inspections during the operation and maintenance phase. The inspection frequency during the operation and maintenance phase will be determined in the permit:

- Single-family dock (to verify that: handrails are constructed and are maintained to prevent mooring of vessels in shallow waters);
- Multi-slip docking facility (to verify maintenance of manatee protection signs, sewage pumpout facilities, or over-water fueling operation);
- Single-family lot fill (to verify lawn grading and sloping is maintained to reduce discharges of nutrients from lawn runoff entering sensitive waters);
- Seawalls or rip rap (to verify integrity of system or shoreline plantings);
- Lands within a conservation easements (for encroachments, alterations, or exotic/nuisance vegetation removal) in accordance with a permit under this chapter;
- Mitigation sites (to determine compliance with success criteria, including the status of exotic species removals); and
- Other dredging or filling (for example, dredged material sites and dams to ensure functioning and stability of dikes and control structures).

(e) The efficiency of stormwater management systems, dams, impoundments, and most other projects normally decreases over time without periodic maintenance. For example, a significant reduction in the flow capacity of a stormwater management system often can be attributed to partial blockages of its conveyance system. Once flow capacity is compromised, flooding may result. Therefore, operation and maintenance entities must

perform periodic inspections to identify if there are any deficiencies in structural integrity, degradation due to insufficient maintenance, or improper operation of projects that may endanger public health, safety, or welfare, or the water resources. If deficiencies are found, the operation and maintenance entity will be responsible for correcting the deficiencies so that the project is returned to the operational functions required in the permit and contemplated by the design of the project as permitted. The corrections must be done a timely manner to prevent compromises to flood protection and water quality.

(f) Inspection and reporting frequencies will be included as permit conditions based on site-specific operational and maintenance requirements, considering things as:

1. The type, nature, and design of the design and performance standards proposed, including any alternative designs such as pervious pavement, green roofs, cisterns, managed aquatic plant systems, stormwater harvesting, wetland treatment trains, low impact designs, alum or polymer injection systems;

2. The proximity of receiving waters classified as Outstanding Florida Waters in Rule 62-302.700, F.A.C., or impaired for constituents likely to be contained in discharges from the project;

3. The nature of the site, such as whether it is part of a port or landfill, whether it will impound more than 40 acre-feet of water, or will include above ground impoundments;

4. The topography, rainfall patterns, and adjacent development surrounding the activity site, including any special basin designations within the District in which the activity is located, as identified in paragraph 62-330.301(1)(k), F.A.C.;

5. The nature of the underlying soils, geology, and groundwater, and hydrology;

6. The potential for construction and operation of the project to cause harm to public health, safety, or welfare, or harm to water resources, water quality standards, or water quality; and

7. Prior compliance history with the proposed design and performance type, including whether the activity characteristics are likely to pose more than a minimal risk for harm.

(g) Special attention shall be made during inspections to ensure that:

1. All erosion is controlled and soil is stabilized to prevent sediment discharge to waters in the state;

2. The system is kept free of debris, trash, garbage, oils and greases, and other refuse;

3. Stormwater management systems that include oil and grease separators, skimmers, or collection devices are working properly and do not allow the discharge of oils or greases. Oils and greases or other materials removed from

such a device during routine maintenance shall be disposed of at a sanitary landfill or by other lawful means; and

4. All structures within stormwater management systems have not become clogged or choked with vegetative or aquatic growth to such an extent as to render them inoperable.

(h) Unless otherwise specified in the permit, the operation and maintenance entity must maintain a record of each inspection, including the date of inspection, the name and contact information of the inspector, whether the system was functioning as designed and permitted, and make such record available upon request of the Agency, in accordance with **section 12.5, below**.

(i) The inspection and reporting requirements contained in a permit issued under Part IV of Chapter 373, F.S., prior to October 1, 2013, the effective date of Chapter 62-330, F.A.C., which implements Section 373.4141, F.S., shall continue to be followed in accordance with the existing permit unless the permittee obtains a modification using the procedures in Rule 62-330.315, F.A.C., to comply with the inspection and reporting requirements of Rule 62-330.311, F.A.C., and this section of the Handbook.

12.5 Reporting

(a) All forms required for reporting can be submitted to the respective Agency Internet site. If the permittee does not use the electronic forms provided on that site, they shall be responsible for retaining records of the inspections and for delivering such records within 30 days of request to the requesting Agency, unless a more rapid delivery is requested for such reasons as the potential for the activity harm to water quality, water resources, public health, or public safety.

(b) Within 30 days of any failure of a stormwater management system or deviation from the permit, a report shall be submitted electronically or in writing to the Agency using Form 62-330.311(1), "Operation and Maintenance Inspection Certification," describing the remedial actions taken to resolve the failure or deviation.

(c) The operation and maintenance entity of a regional stormwater management facility must notify the Agency on an annual basis, using Form 62-330.311(2), "Regional Stormwater Management System Annual Report," of all new systems and their associated stormwater volumes that have been allowed to discharge stormwater into the regional facility, and confirming that the maximum allowable treatment volume of stormwater authorized to be accepted by the regional stormwater management facility has not been exceeded.

(d) A listing of all the forms that are incorporated by reference in Chapter 62-330, F.A.C., is contained in Appendix C of this Volume; copies of which may be obtained from the Agency, as described in Appendix A of this Volume and subsection 62-330.010(5), F.A.C.

12.6 Recording of Operation and Maintenance Documents and Notice of Permit

(a) Operation and maintenance documents required by **section 12.3.3 above**, must be submitted to the Agency for approval prior to recording. Such documents must be recorded in public records of the county where the project is located prior to any lot or

unit sales within the project served by the system, or upon completion of construction of the system, whichever occurs first. For those systems that are to be operated and maintained by county or municipal entities, final operation and maintenance documents must be received by the Agency when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system.

(b) Permittees are advised that the Agency shall cause a "Recorded Notice of Environmental Resource Permit," Form No. 62-330.090(1), to be recorded in the public records of the county where the property is located in accordance with subsection 62-330.090(7), F.A.C., upon issuance of a permit, except for certain types of activities identified in that subsection.

12.7 Subsequent Transfers

Transfers of the permitted activity or the real property on which the permitted activity is located once a permit is in the operation and maintenance phase are governed by the procedures described in Rule 62-330.340, F.A.C., and **section 6.3 of this Volume**.

APPENDIX A

CONTACT INFORMATION AND MAPS FOR AGENCIES IMPLEMENTING THE ERP PROGRAM

The Agencies have divided responsibilities for permitting, compliance, and enforcement in accordance with Operating and Delegation Agreements incorporated by reference in Chapter 62-113, F.A.C., and as referenced in subsection 62-330.010(3), F.A.C.

Rule 62-330.061, F.A.C., provides in general terms that applications and notices are to be submitted to the correct agency. However, some applications involve activities, a portion of which extends beyond the boundary of more than one water management districts. In such a case, Section 373.046(6), F.S., provides that the responsible Agency will be determined based on factors such as the amount and geography of the activity's land area, the location of the activity's discharge or discharges, the type of activity, prior agency history, and the terms and conditions of the Operating Agreement in effect between the Agencies.

Electronic applications shall be filed through the applicable Agency e-permitting portal or website listed in subsection 62-330.010(7), F.A.C., or at http://flwaterpermits.com/, or at the following Internet site of the applicable District:

SWFWMD: http://www.swfwmd.state.fl.us/permits/

SJRWMD: http://www.sjrwmd.com/permitting/ or https://permitting.sjrwmd.com/epermitting/jsp/start.jsp

SRWMD: https://permitting.sjrwmd.com/srepermitting/jsp/start.jsp

NWFWMD: http://www.nwfwmd.state.fl.us/permits/erp/epermit_home.html (ERP) and http://www.nwfwmd.state.fl.us/permits/permits-wells.html (WWC)

SFWMD: http://my.sfwmd.gov/ePermitting/MainPage.do

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DISTRICT AND BRANCH OFFICES

http://www.dep.state.fl.us/secretary/dist/default.htm

Northwest District:
Escambia, Holmes, Okaloosa, Santa Rosa, & Walton Counties
160 W. Governmental Street, Suite 308
Pensacola, FL 32502-5740
http://www.dep.state.fl.us/northwest/

Northwest District Branch Office: Bay, Calhoun, Gulf, Jackson, & Washington
2353 Jenks Avenue
Panama City, FL 32405

Northwest District Branch Office: Franklin, Gadsden, Jefferson, Leon, Liberty, & Wakulla
3800 Commonwealth Blvd., MS 55
Tallahassee, FL 32399

Northeast District:
Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor and Union
8800 Baymeadows Way West, Suite 100
Jacksonville, FL 32256-7590
http://www.dep.state.fl.us/northeast/

Central District:
Brevard, Lake, Marion, Orange, Osceola, Seminole, Sumter and Volusia
3319 Maguire Boulevard, Suite 232
Orlando, FL 32803-3767
http://www.dep.state.fl.us/central/

Southwest District:
Citrus, Hardee, Hernando, Hillsborough, Manatee, Pasco, Pinellas and Polk
13051 N. Telecom Parkway
Temple Terrace, FL 33637-0926
http://www.dep.state.fl.us/southwest/

Southeast District:
Broward, Dade and Palm Beach
400 North Congress Avenue, Third Floor
West Palm Beach, FL 33401-2913
http://www.dep.state.fl.us/southeast/

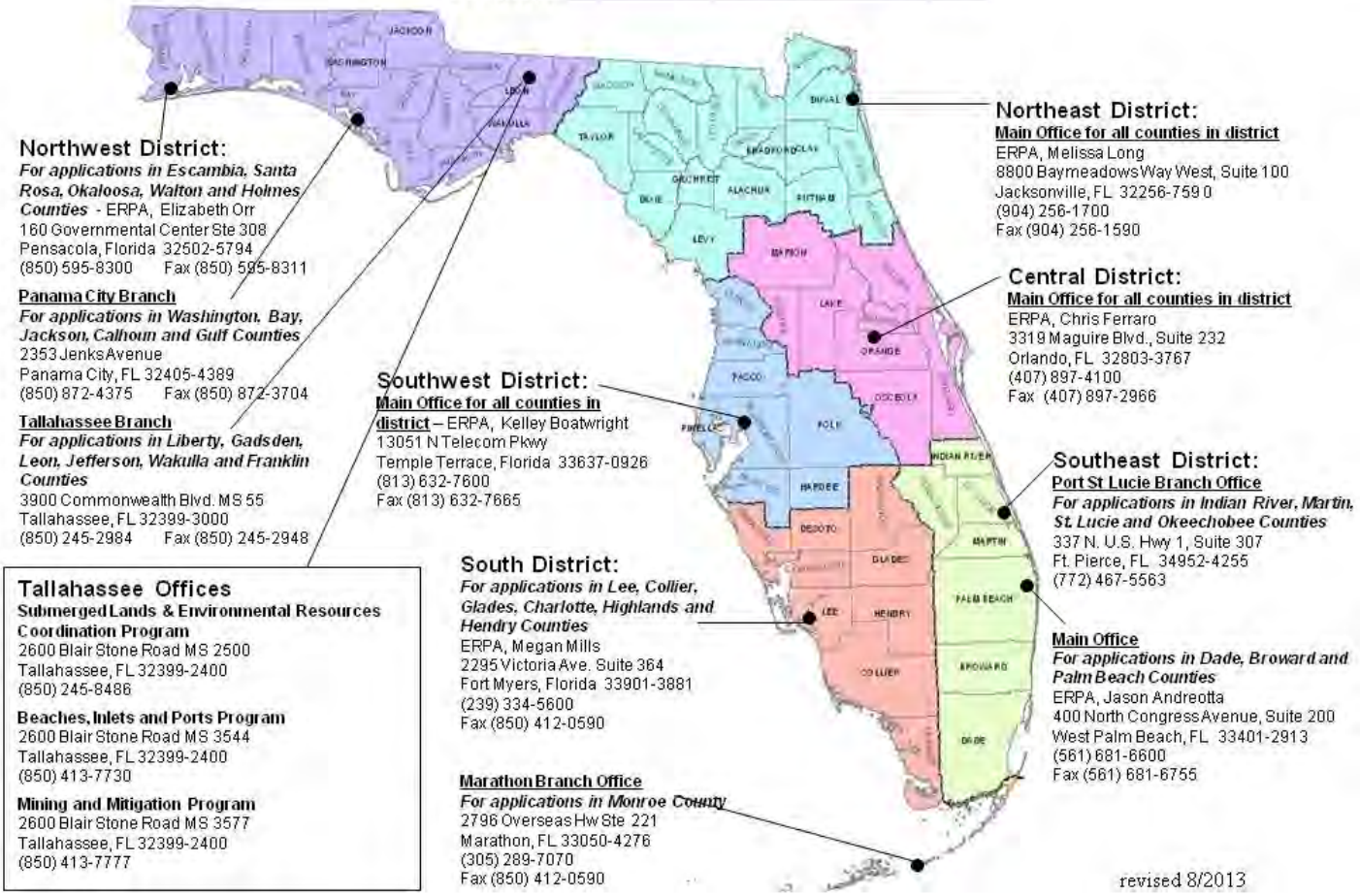
Southeast District Branch Office: Indian River, Martin, Okeechobee and St. Lucie
1801 SE Hillmoor Drive, Suite C-204
Port St. Lucie, FL 34952

Figure 1A

Florida Department of Environmental Protection District Offices

SLERC Program Contacts

Directions:



Northwest District:
For applications in Escambia, Santa Rosa, Okaloosa, Walton and Holmes Counties - ERPA, Elizabeth Orr
160 Governmental Center Ste 308
Pensacola, Florida 32502-5794
(850) 595-8300 Fax (850) 595-8311

Panama City Branch
For applications in Washington, Bay, Jackson, Calhoun and Gulf Counties
2353 Jenks Avenue
Panama City, FL 32405-4389
(850) 872-4375 Fax (850) 872-3704

Tallahassee Branch
For applications in Liberty, Gadsden, Leon, Jefferson, Wakulla and Franklin Counties
3900 Commonwealth Blvd. MS 55
Tallahassee, FL 32399-3000
(850) 245-2984 Fax (850) 245-2948

Tallahassee Offices
Submerged Lands & Environmental Resources Coordination Program
2600 Blair Stone Road MS 2500
Tallahassee, FL 32399-2400
(850) 245-8486

Beaches, Inlets and Ports Program
2600 Blair Stone Road MS 3544
Tallahassee, FL 32399-2400
(850) 413-7730

Mining and Mitigation Program
2600 Blair Stone Road MS 3577
Tallahassee, FL 32399-2400
(850) 413-7777

Northeast District:
Main Office for all counties in district
ERPA, Melissa Long
8800 Baymeadows Way West, Suite 100
Jacksonville, FL 32256-7590
(904) 256-1700
Fax (904) 256-1590

Central District:
Main Office for all counties in district
ERPA, Chris Ferraro
3319 Maguire Blvd., Suite 232
Orlando, FL 32803-3767
(407) 897-4100
Fax (407) 897-2966

Southwest District:
Main Office for all counties in district – ERPA, Kelley Boatwright
13051 N Telecom Pkwy
Temple Terrace, Florida 33637-0926
(813) 632-7600
Fax (813) 632-7665

Southeast District:
Port St Lucie Branch Office
For applications in Indian River, Martin, St. Lucie and Okeechobee Counties
337 N. U.S. Hwy 1, Suite 307
Ft. Pierce, FL 34952-4255
(772) 467-5563

South District:
For applications in Lee, Collier, Glades, Charlotte, Highlands and Hendry Counties
ERPA, Megan Mills
2295 Victoria Ave. Suite 364
Fort Myers, Florida 33901-3881
(239) 334-5600
Fax (850) 412-0590

Main Office
For applications in Dade, Broward and Palm Beach Counties
ERPA, Jason Andreotta
400 North Congress Avenue, Suite 200
West Palm Beach, FL 33401-2913
(561) 681-6600
Fax (561) 681-6755

Marathon Branch Office
For applications in Monroe County
2796 Overseas Hw Ste 221
Marathon, FL 33050-4276
(305) 289-7070
Fax (850) 412-0590

revised 8/2013

WATER MANAGEMENT DISTRICTS

Water management districts: contact information is available at the Department's site http://www.dep.state.fl.us/secretary/watman/default.htm, at the permitting portal http://www.flwaterpermits.com/home/, and at individual water management district web sites.

Northwest Florida Water Management District:

Contact the nearest Field Office

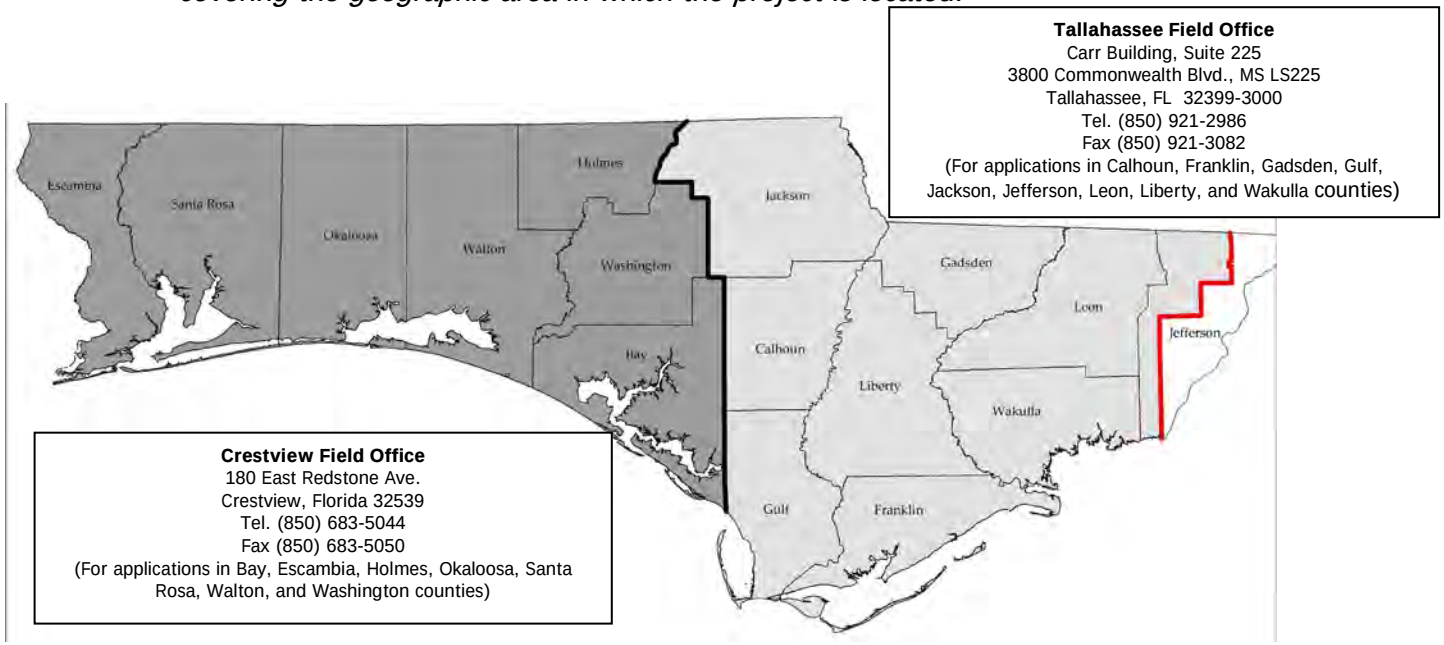
http://www.nwfwmd.state.fl.us/
http://www.flwaterpermits.com/home/nwfwmd_inside.jsp
ePermitting: http://www.nwfwmd.state.fl.us/permits/erp/epermit_home.html

Tallahassee Field Office (ERP)
Carr Building, Suite 225
3800 Commonwealth Blvd., MS LS225
Tallahassee, FL 32399-3000

Crestview Field Office
180 East Redstone Ave.
Crestview, Florida 32539

Figure 1B:
Northwest Florida Water Management District Geographic Limits and Office Responsibilities

Note: Electronic applications can be submitted to the NWFWMD via the web. Paper applications can be submitted to the office covering the geographic area in which the project is located.



SUWANNEE RIVER WATER MANAGEMENT DISTRICT

Contact the Water Supply and Resource Management Department
http://www.flwaterpermits.com/home/srwmd_inside.jsp
http://www.SRWMD.state.fl.us
http://www.srwmd.state.fl.us/index.aspx

Water Supply and Resource Management Department
9225 CR 49
Live Oak, FL 32060

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

Contact the District Headquarters
http://www.flwaterpermits.com/home/stjohns_inside.jsp
http://www.SJRWMD.com
ePermitting: http://floridaswater.com/permitting/

District Headquarters, Division of Permit Data Services
4049 Reid Street
Palatka, Florida 32177-2529

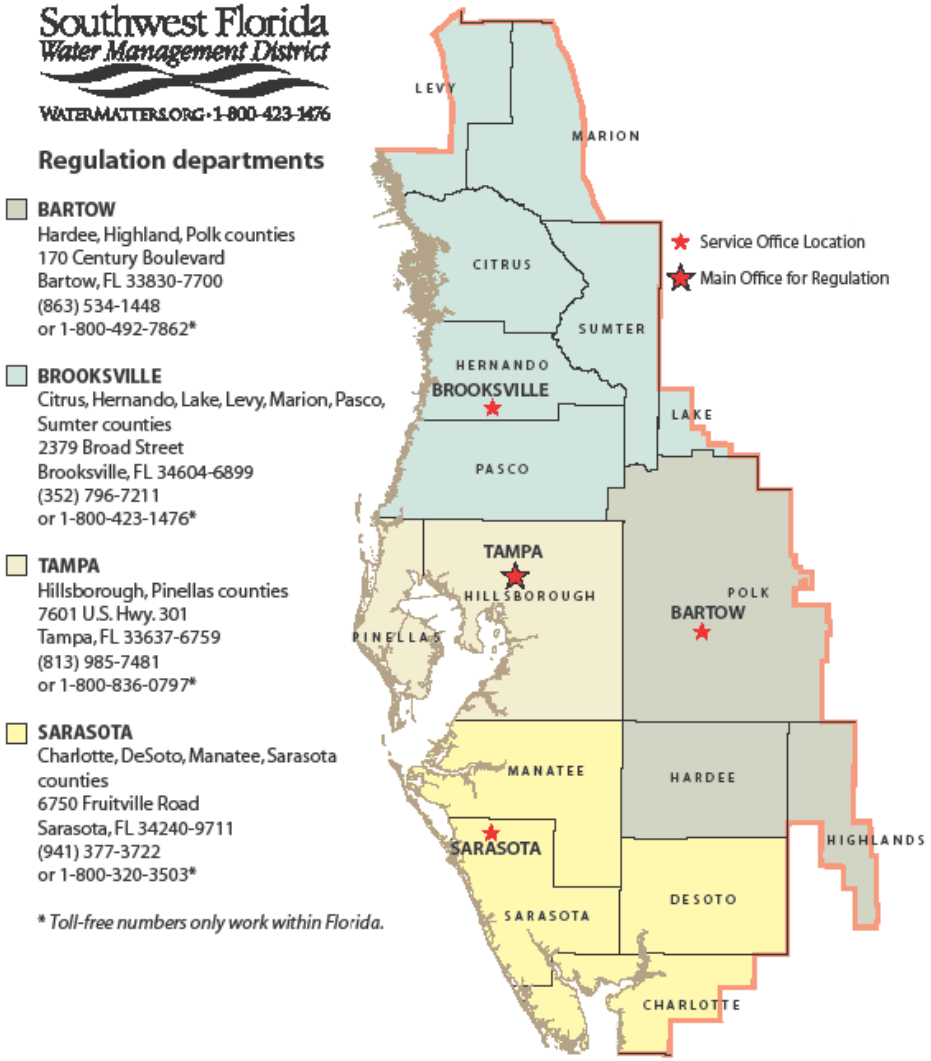
P.O. Box 1429
Palatka, FL 32178-1429

Southwest Florida Water Management District

Contact the nearest Tampa Service Center or the nearest Regulation Department office as depicted below:

http://www.flwaterpermits.com/home/swfwmd_inside.jsp
http://www.WaterMatters.org
ePermitting: http://www.swfwmd.state.fl.us/permits/

Tampa Service Office
7601 US Hwy. 301
Tampa, FL 33637-6759

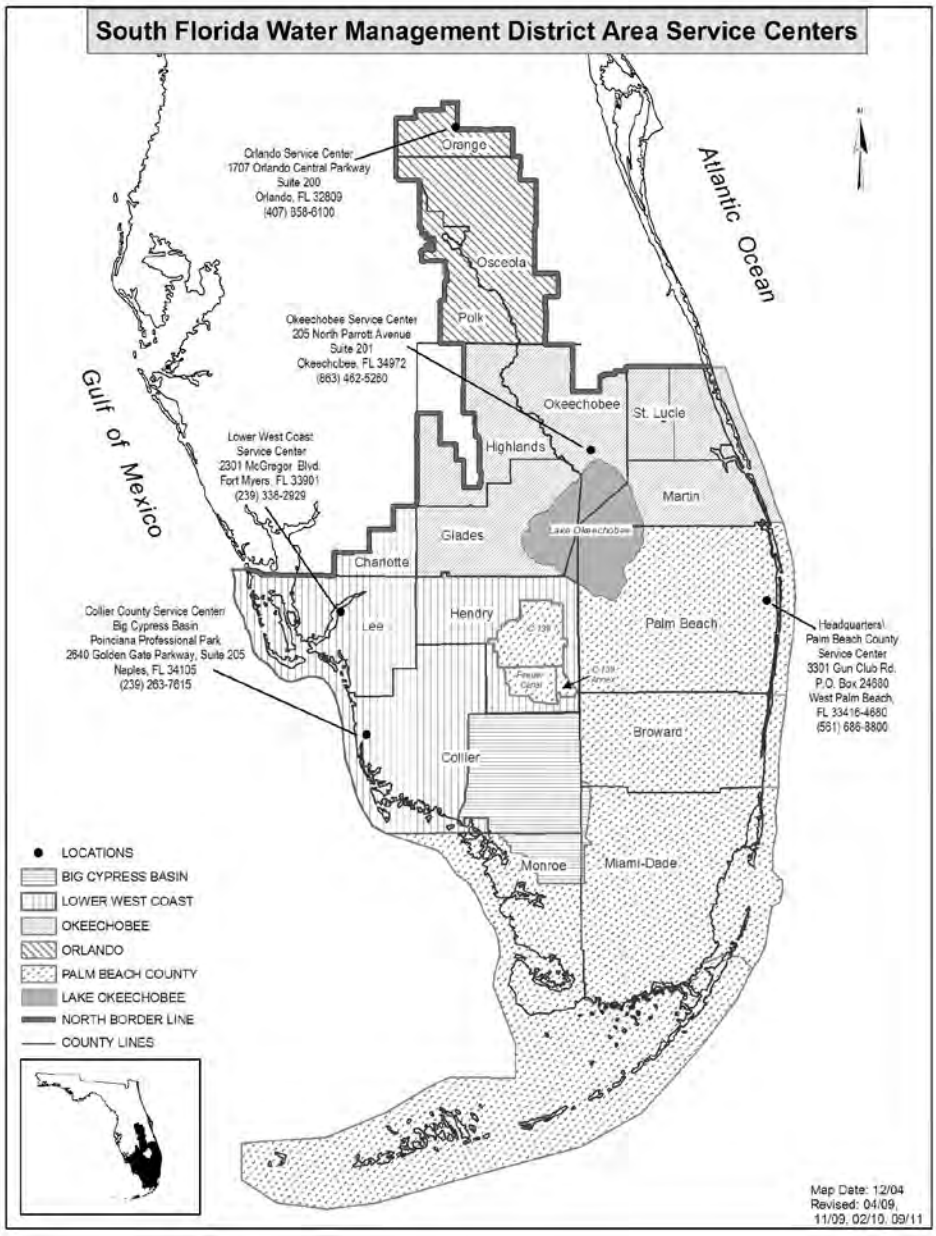


South Florida Water Management District

Contact the nearest Service Center or the Regulation Reception Desk

http://www.flwaterpermits.com/home/sfwmd_inside.jsp
http://www.sfwmd.gov/ePermitting
http://my.sfwmd.gov/portal/page/portal/levelthree/permits, or at any of the District's Service Centers online at www.sfwmd.gov, "Locations."

Regulation Reception Desk
3301 Gun Club Road
P.O. Box 24680
West Palm Beach, FL 33406-4608



Local Governments with Delegated Authority

1. Broward County:
   Agreement dated 7/19/2001: http://www.dep.state.fl.us/water/wetlands/docs/erp/BrowardCoDeleg.pdf
   http://www.broward.org/permittingandlicensing/Pages/Default.aspx

   Broward County Department of Environmental Protection and Growth Management,
   Development and Environmental Regulation Division
   1 North University Drive, Suite 201
   Plantation, FL 33324, (954) 519-1473

2. Environmental Protection Commission of Hillsborough County:
   Agreement dated 2/9/2012:
   http://www.dep.state.fl.us/water/wetlands/docs/erp/epc-hillsborough-erp-agreeement.pdf
   http://fl-hillsboroughcountyepc.civicplus.com/

   Executive Director
   Environmental Protection Commission
   3629 Queen Palm Dr.
   Tampa, FL 33619

APPENDIX B

OPERATING AND DELEGATION AGREEMENTS BETWEEN THE DEPARTMENT, WATER MANAGEMENT DISTRICTS, and DELEGATED LOCAL GOVERNMENTS

The following Operating Agreements have been executed between the Department and the Districts to implement the divisions of responsibilities for implementing the environmental resource permitting program under Part IV of Chapter 373, F.S. These Agreements are cited in subsection 62-330.010(3), F.A.C., and are incorporated by reference in Chapter 62-113, F.A.C.:

#10-1 Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between Northwest Florida Water Management District and Department of Environmental Protection, effective October 1, 2013, incorporated by reference in paragraph 62-113.100(3)(aa), F.A.C. (October 1, 2013).

#07-2: Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., between Suwannee River Water Management District and Department of Environmental Protection, dated July 1, 2007, incorporated by reference in paragraph 62-113.100(3)(m), F.A.C., and subsection 40B-400.091(2), F.A.C. (June 7, 2010).

#07-4: Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., between St. Johns River Water Management District and Department of Environmental Protection, dated July 1, 2007, incorporated by reference in paragraph 62-113.100(3)(x), F.A.C., and subsection 40C-4.091(1)(b), F.A.C. (May 27, 2012).

#07-3: Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between the Southwest Florida Water Management and Department of Environmental Protection, dated July 1, 2007, incorporated by reference in paragraph 62-113.100(3)(s), F.A.C., and subsection 40D-4.091(2), F.A.C. (August 1, 2012).

#07-1: Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., between South Florida Water Management District and Department of Environmental Protection, dated July 1, 2007, incorporated by reference in paragraph 62-113.100(3)(f), F.A.C., and subsection 40E-4.091(1)(c), F.A.C., May 27, 2012

The following Delegation Agreements have been executed between the Department and Local Governments to delegate responsibilities of the Agencies for implementing the environmental resource permitting program under Part IV of Chapter 373, F.S. These Agreements are in subsection 62-330.010(5), F.A.C., and are incorporated by reference in Chapter 62-113, F.A.C:

#01-1: Delegation Agreement Between the Florida Department of Environmental Protection, the South Florida Water Management District, and Broward County Regarding Implementation of Environmental Resource Permitting, Compliance, and Enforcement, under Part IV, Chapter 373, F.S., dated May 22, 2001, incorporated by reference in paragraph 62-113.100(2)(o), F.A.C.

#11-1: Delegation Agreement Between the Florida Department of Environmental Protection and the Environmental Protection Commission, Hillsborough County, Regarding Implementation of Environmental Resource Permitting, Compliance, and Enforcement, under Part IV, Chapter 373,

F.S., effective date December 13, 2011, incorporated by reference in paragraph 62-113.100(2)(p), F.A.C., dated May 22, 2001.

Additional Operating Agreements, Memoranda of Understandings, and Delegation Agreements may be accessed at:
http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm

APPENDIX C
FORMS

The following forms incorporated for use in Chapter 62-330, F.A.C., (as identified by the Form number) are listed below.

Form No.	Title
Form 62-330.050(1)	"Request for Verification of an Exemption" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02468]
Form 62-330.0511(1)	"Notice of Intent to Construct a Minor Silvicultural System" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02510]
Form 62-330.060(1)	Section A "Joint Application for Individual and Conceptual Environmental Resource Permit/Authorization to Use State-Owned Submerged Lands/Federal Dredge and Fill Permit" [http://www.flrules.org/Gateway/reference.asp?No=Ref-03189]
	Section B: For Single-Family Projects [http://www.flrules.org/Gateway/reference.asp?No=Ref-03189]
	Section C: Supplemental Information for Works or Other Activities In, On, Over Wetlands and/or Other Surface Waters [http://www.flrules.org/Gateway/reference.asp?No=Ref-03189]
	Section D: Supplemental Information For Works or Other Activities Within Surface Waters [http://www.flrules.org/Gateway/reference.asp?No=Ref-03189]
	Section E: Supplemental Information Required for Works or Other Activities Involving a Water Management System (Other Than a Single-Family Project [http://www.flrules.org/Gateway/reference.asp?No=Ref-03189]
	Section F: Application For Authorization to Use State-Owned Submerged Lands [http://www.flrules.org/Gateway/reference.asp?No=Ref-03189]
	Section G: Supplemental Information Required for Mitigation Banks [http://www.flrules.org/Gateway/reference.asp?No=Ref-03189]
	Section H: Supplemental Information for Applications for Environmental Resource Permits Involving Stormwater Management Systems for Mines [http://www.flrules.org/Gateway/reference.asp?No=Ref-03189]
	Attachments 1-3: Joint Application Form Instructions, Agency Contacts, and Application Fees [http://www.dep.state.fl.us/water/wetlands/erp/forms.htm]
Form 62-330.090(1)	"Recorded Notice of Environmental Resource Permit" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02519]
Form 62-330.201(1)	"Petition for a Formal Determination of the Landward Extent of Wetlands and Other Surface Waters" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02471]
Form 62-330.301(1)	"Performance Bond To Demonstrate Financial Assurance for Mitigation" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02472]
Form 62-330.301(2)	"Irrevocable Letter of Credit to Demonstrate Financial Assurance for Mitigation" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02473]
Form 62-330.301(3)	"Standby Trust Fund Agreement to Demonstrate Financial Assurance for Mitigation" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02474]
Form 62-330.301(4)	"Trust Fund Agreement to Demonstrate Financial Assurance for Mitigation" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02477]
Form 62-330.301(5)	"Escrow Agreement" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02476]

Form 62-330.301(6)	"Guarantee Bond To Demonstrate Financial Assurance for Mitigation" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02488]
Form 62-330.301(8)	"Deed of Conservation Easement, Standard" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02489]
Form 62-330.301(9)	"Deed of Conservation Easement , Standard, With Third Party Beneficiary" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02490]
Form 62-330.301(10)	"Deed of Conservation Easement – Passive Recreational Uses" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02491]
Form 62-330.301(11)	"Deed of Conservation Easement - Riparian Uses" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02492]
Form 62-330.301(12)	"Deed of Conservation Easement for Local Governments" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02493]
Form 62-330.301(13)	"Deed of Conservation Easement with Third Party Beneficiary Rights to the U.S. Army Corps of Engineers" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02494]
Form 62-330.301(14)	"Declaration of Restrictive Covenants" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02495]
Form 62-330.301(15)	"Declaration of Restrictive Covenants –Insert" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02496]
Form 62-330.301(16)	"Temporary Easement for Construction Access" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02497]
Form 62-330.301(17)	"Permanent Access Easement" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02498]
Form 62-330.310(1)	"As-Built Certification and Request for Conversion to Operational Phase" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02499]
Form 62-330.310(2)	"Request For Transfer of Environmental Resource Permit to the Perpetual Operation Entity" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02500]
Form 62-330.310(3)	"Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02501]
Form 62-330.311(1)	"Operation and Maintenance Inspection Certification" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02502]
Form 62-330.311(2)	"Regional Stormwater Management System Annual Report" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02503]
Form 62-330.340(1)	"Request to Transfer Permit" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02504]
Form 62-330.350(1)	"Construction Commencement Notice" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02505]
Form 62-330.360(1)	"Emergency Field Authorization" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02506]
Form 62-330.402(1)	"Notice of Intent to Use an Environmental Resource General Permit" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02507]
Form 62-330.417(1)	"Agreement to Maintain Public Access" [http://www.flrules.org/Gateway/reference.asp?No=Ref-02508]
Form 62-330.417(2)	"Agreement to Maintain Public Access and Operate Stormwater System" [https://www.flrules.org/Gateway/reference.asp?No=Ref-02509]

All forms are listed by rule number, which is also the form number, and with the subject title and effective date. Copies of forms may be obtained from the above Internet links, or from any local district or branch office of the Agencies (see subsection 62-330.010(5), F.A.C., and Appendix A).

APPENDIX D

PROCESSING FEES

Processing fees required for applications, notices, and petitions submitted to the Agencies are accessible at:

- Submittals to the Department or the Northwest Florida Water Management District — Rule 62-4.050(4)(h) , F.A.C. [https://www.flrules.org/gateway/ChapterHome.asp?Chapter=62-4]

- Submittals to the Suwannee River Water Management District — Rule 40B-1.706, F.A.C. [https://www.flrules.org/Gateway/reference.asp?No=Ref-02534]

- Submittals to the St. Johns River Water Management District — Rule 40C-1.603, F.A.C. [https://www.flrules.org/Gateway/reference.asp?No=Ref-02535]

- Submittals to the Southwest Florida Water Management District — Rule 40D-1.607, F.A.C. [https://www.flrules.org/Gateway/reference.asp?No=Ref-02536]

- Submittals to the South Florida Water Management District — Rule 40E-1.607, F.A.C. [https://www.flrules.org/Gateway/reference.asp?No=Ref-02537]

These rules are incorporated by reference in Rule 62-330.071, F.A.C.

For applications, notices, or petitions that are the responsibility of a local government delegated to implement Chapter 62-330, F.A.C., in accordance with Section 373.441, F.S., the processing fee shall be submitted to the local government in accordance with the fee schedule of the local government as authorized in the Delegation Agreement between the Department and the local government incorporated by reference in Chapter 62-113, F.A.C.

- Broward County

- Hillsborough County

OPERATING AGREEMENT BETWEEN THE JACKSONVILLE DISTRICT OF THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, AND THE SUWANNEE RIVER WATER MANAGEMENT DISTRICT CONCERNING REGULATORY PROGRAMS FOR ACTIVITIES IN WETLANDS AND OTHER SURFACE WATERS, INCLUDING WATERS OF THE UNITED STATES

I. PARTIES, PURPOSE AND GOALS

A. The Parties

The Parties to this Agreement are the Jacksonville District of the United States Army Corps of Engineers (Corps), Florida Department of Environmental Protection (Department), Northwest Florida Water Management District (NWFWMD), South Florida Water Management District (SFWMD), St. Johns River Water Management District (SJRWMD), Southwest Florida Water Management District (SWFWMD), and Suwannee River Water Management District (SRWMD) (collectively referred to as "Districts"). Where the Department or a District has delegated responsibilities to a local government in accordance with section 373.441, Florida Statutes (F.S.), this Agreement shall also apply to those local governments that have been delegated such authority as of the effective date of this Agreement.

B. Purpose

The purpose of this Agreement is to coordinate the permitting, compliance and enforcement programs of the Parties concerning regulation of activities that affect waters of the United States (WOUS) under the jurisdiction of the Corps, and wetlands and other surface waters under the jurisdiction of the Department or the Districts within the state of Florida. This Agreement shall apply to Department of the Army permits ("DA Permits") issued by the Corps pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 or Section 103 of the Marine Protection, Research and Sanctuaries Act and to permits issued by the Districts or the Department pursuant to part IV of chapter 373, F.S. ("State permits"). This Agreement describes the interaction between the Parties and is subject to the respective laws and implementing regulations and policies of the Parties.

This Agreement supersedes the Agreement entered on November 30, 1998, entitled "Operating Agreement Between the U.S. Army Corps of Engineers, the Florida Department of Environmental Protection, the South Florida Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the Suwannee River Water Management District Concerning Regulatory Programs for Activities in Wetlands

and Other Surface Waters."

C. Goals

It is a goal of the Parties to this Agreement to effectuate efficient, streamlined regulatory programs that govern activities affecting wetlands and other surface waters, including jurisdictional WOUS. Towards this goal, the Parties have established joint application forms and agree, where possible, to coordinate the distribution and review of information received during the permit application review process. Other streamlining measures to be explored and further developed by the Parties include joint field inspections and pre-application meetings, coordinated, complementary enforcement efforts, and the Corps's state programmatic and regional general permits. Additionally, in order to further streamline the permitting process, the agencies agree to continue to jointly review the wetland delineation methodologies of the state and the Corps to identify any differences and explore ways to further resolve or overcome these differences. Further, the Parties may explore methods to integrate the principles of ecosystem management within their existing legal authority in order to achieve more effective environmental protection.

II. WATER QUALITY CERTIFICATION

By letter dated January 15, 1998, to the Secretary of the Department of Environmental Protection, the Governor of the State of Florida, under the authority in 33 U.S.C., Sections 1341 and 1362 (the Clean Water Act), and 40 C.F.R. 121.1(e), designated the Department as the agency responsible for certifying compliance with applicable state water quality standards for federal licenses or permits issued by the Corps under Section 404 of the Clean Water Act, 33 U.S.C. 1344. That letter granted the Department the authority to issue, deny, or waive certification of compliance with water quality standards, the authority to identify categories of activities for which water quality certification is waived, and the authority to establish categories of State permits or other authorizations for which the issuance (or denial) of the permit or authorization constitutes a certification (or denial of certification) that the permitted or authorized activity complies with (or fails to comply with) applicable state water quality standards. By letter dated February 2, 1998, to the Administrator of the Environmental Protection Agency, the Secretary of the Department of Environmental Protection, as delegated by the Governor of the State of Florida, designated certain permits under part IV of chapter 373, F.S., and other authorizations as constituting state certification of compliance with state water quality standards unless the permit or other authorization specifically states otherwise, established categories of activities for which water quality certification is waived, and delegated concurrent authority to issue, deny or waive water quality certifications to a District created under section 373.069, F.S., or to the head of a county, municipality or local government local pollution control program where such county, municipality, or local government pollution control program has received delegation of the permitting authority from the Department or a District under section 373.441, F.S. In accordance with these letters, the Parties agree to the following regarding water quality certification.

A. Grants or Waivers of Water Quality Certification

1. Each of the following will constitute the granting of water quality certification by the Department or Districts, unless a State permit is issued pursuant to the net improvement provisions for water quality provided by section 373.414(1)(b), F.S., or unless otherwise specifically stated in the State permit or authorization.

   (a) Noticed general environmental resource permits and wetland resource general permits under part IV of chapter 373, F.S.

   (b) Standard, general, standard general, individual, or conceptual approval environmental resource permits, and individual wetland resource permits issued under part IV of chapter 373, F.S.

   (c) Management and storage of surface waters permits for agricultural activities or agricultural water management systems issued under part IV of chapter 373, F.S.

   (d) Joint coastal permits issued under section 161.055 and part IV of chapter 373, F.S.

   (e) Individual and conceptual mitigation bank permits issued under part IV of chapter 373, F.S.

   (f) A written final order granting “certification" under one of the following siting acts by the Governor and Cabinet as the Siting Board, the Florida Land and Water Adjudicatory Commission, or by the Department of Environmental Protection, as appropriate:

      (1) The Florida Electric Power Plant Siting Act, sections 403.501- .519, F.S. (2011), as amended;

      (2) The Florida Transmission Line Siting Act, sections 403.501 - .5365, F.S., together with sections 403.537-.539, F.S. (2011), as amended; or

      (3) The Natural Gas Transmission Pipeline Siting Act, sections 403.9401-.9425, F.S. (2011), as amended.

   (g) Consent decrees, orders, or agreements issued by the Department, a District, or a delegated local government under section 373.441, F.S. (hereinafter the term “Department or District’ shall also include local governments delegated in accordance with Section 373.441, F.S.), where such consent decree, order, or agreement authorizes activities which would otherwise require a permit under part IV of chapter 373, F.S.

2. Water quality certification will be considered waived for the following:

(a) Activities, other than agricultural activities or agricultural water management systems, exempt by rule or statute from the requirement to obtain an environmental resource permit and a wetland resource permit under part IV of chapter 373, F.S., including activities that fall below permitting thresholds;

(b) Agricultural activities or agricultural water management systems exempt by rule or statute from the requirement to obtain an environmental resource permit and a management and storage of surface waters permit under part IV of chapter 373, F.S., including activities that fall below permitting thresholds;

(c) Activities permitted or authorized, as described in Sections II. A. 1(a) through (g), when the permit or authorization is issued pursuant to the net improvement provisions for water quality provided by paragraph 373.414(1)(b), F.S.;

(d) Activities permitted or authorized in Sections II. A. 1(a) through (g) when the permit or authorization expressly waives water quality certification.

B. Denial of Water Quality Certification

Unless otherwise stated in the denial document, the denial of the State permit or authorization, listed in Section II.A.1. of this Agreement shall constitute denial of the state water quality certification. Where a final Department or District action on an application for a permit listed in Section II.A.1. of this Agreement cannot be made within the time frames specified in Section II.C. of this Agreement and the application otherwise does not meet the criteria for issuance of a permit, the Department or District may deny water quality certification for the activity described in the permit application in order to meet the time clock requirements in Section II.C.

C. Time Frames

Once the Department or the District determines that an application for a permit listed under Section II.A.1. of this Agreement is complete, the Department or District shall have 365 days to act on the certification, or the certification shall be considered waived.

D. Corps Nationwide Permits

For nationwide permits that have received water quality certification by the Department, or where water quality certification has been waived by the Department or District, no individual water quality certification is necessary. For those Corps nationwide permits that were conditioned upon individual review of the water quality certification by the Department or District, or that have been denied water quality certification by the Department or District, state water quality certification for an individual proposed activity shall be made in accordance with

Sections II. A - C.

III. COASTAL ZONE CONSISTENCY CONCURRENCE (CZCC)

In accordance with section 373.428, F.S., final agency action by the Department or District on a permit application submitted under part IV of chapter 373, F.S., that is subject to a consistency review under section 380.23, F.S., shall constitute the state's determination as to whether the activity is consistent with the federally approved Coastal Management Program. The Parties agree to the following procedures regarding coastal zone consistency determinations.

A. Determination of Concurrence

The following will constitute a finding of concurrence with the state's coastal zone management program for the activity authorized thereby:

1. Noticed general environmental resource permits and wetland resource general permits under part IV of chapter 373, F.S.;

2. Standard, general, standard general, individual, or conceptual approval environmental resource permits and individual wetland resource permits issued under part IV of chapter 373, F.S.;

3. Joint coastal permits issued under section 161.055 and part IV of chapter 373, F.S.;

4. Individual and conceptual mitigation bank permits issued under section 161.055 and part IV of chapter 373, F.S.; and

5. Management and storage of surface waters permits for agricultural activities or agricultural water management systems issued under part IV of chapter 373, F.S.

B. Determination of Inconsistency

The denial of a permit listed in Section III. A. of this Agreement shall constitute a finding that the activity is inconsistent with the state's coastal zone management program.

C. Time Frames

The time frame for a coastal zone concurrence begins upon a determination by the Department or the District that an application for a permit listed in Section III.A. of this Agreement is complete. The coastal zone consistency decision must be made within 180 days after the application is considered complete by the Department or District and in accordance with the procedures in 15 C.F.R. 930

Subpart D. At the end of 180 days, if a determination of coastal zone consistency has not been made, concurrence will be conclusively presumed, unless the applicant and the Department or District have agreed to waive the 180-day time clock pursuant to 15 C.F.R. 930.60(b).

D. **Corps Nationwide Permits**

For nationwide permits that have been determined to be consistent with the state's coastal zone management program, no individual coastal zone consistency concurrence determination is necessary. For those Corps nationwide permits where consistency with the state coastal zone management program is conditioned upon individual review of the coastal zone management consistency by the state of Florida, or has been denied by Florida, the final consistency concurrence determination for a proposed activity shall be made in accordance with Sections III A - C.

E. **Exemptions**

Pursuant to section 380.23(7), F.S., applications for federally permitted or licensed activities that qualify for an exemption under section 373.406 or 403.813(1), F.S., are not eligible to be reviewed for federal consistency with part IV of chapter 373, F.S. For purposes of this Agreement, the Corps or any designated Federal, State or local agency administering general permits on behalf of the Corps under 33 C.F.R. § 325.2(b)(2) may presume CZCC by operation of Section 380.23(7), F.S., for such exempt activities, provided the activity receives the applicable authorization to use and occupy state-owned submerged lands under chapter 253, F.S., and, as applicable, chapter 258, F.S., and the rules of the Florida Administrative Code adopted thereunder. For purposes of this agreement, the Corps or any designated Federal, State or local agency administering general permits on behalf of the Corps shall not be precluded from acting on the DA permit before the applicable authorization under chapter 253, F.S., and, as applicable, chapter 258, F.S., is obtained or granted, because it is understood such authorization must be obtained prior to persons using or occupying state-owned submerged lands.

IV. PERMIT APPLICATION COORDINATION

A. Joint Application Forms

The Parties have developed comprehensive, integrated joint permit application forms to initiate processing of permit applications required by each of the Parties. For activities that require a DA Permit and an environmental resource permit under part IV of chapter 373, F.S., the "Joint Application for Environmental Resource Permit/Authorization to Use State Lands/Federal Dredge and Fill Permit," the "Application for a Joint Coastal Permit," or the "Joint Application Forms and Instructions for Wetland Resource Alterations (Dredging & Filling) in the Waters of Florida" will be used. For activities that require a DA Permit and a wetland resource permit under the provisions of Section 373.4145(6) or

373.414(11) - (16), F.S., the "Joint Application For Works in the Waters of Florida" and the "Notice of Intent to Construct Works Pursuant to a Wetland Resource General Permit" will be used.

B. Processing of Applications

Except as provided below for E-permitting, for activities that do not qualify for processing as “green” under the State Programmatic General Permit, once a joint application, a request for permit modification, or a request for verification of exempt status is submitted by an applicant to the Department or District, the responsible agency (in accordance with the division of responsibilities in the Operating Agreements in effect between the Department and Districts) will, forward the following information to the Corps office with responsibility for processing the corresponding DA Permit application. All forwarded materials will include a Department or District application processing number

1. Forwarding Received Applications;

   Within five working days of receipt, the Department or District, as applicable, will forward to the Corps, either by mail or electronically via a mutually agreed upon protocol:

   (a) For WRP applications, a copy of the application, all submitted maps, drawings, and any other information accompanying the application or request;

   (b) For ERP applications, including mitigation banks, that have one or more of the following items provided or identified, one copy of the Notice of Receipt of the Application (Section C of the Joint Application) with its accompanying maps, drawings and any other information accompanying the application or request:

      (1) A completed Corps’ Data Entry Sheet;

      (2) Any indication in the application that work is occurring, or appears to be occurring, in, on, or over wetlands and other surface waters.

      (3) A type of DA Permit or enforcement action is requested or is identified as pending, issued or denied at the location of the activity. The Corps number starts with an “SAJ” and the four digit year (prior to 1990 the number started with a two digit year); the number also may include staff initials.

      (4) An indication in the application that a member of the Corps has attended a pre-application meeting.

2. Forwarding of Applications and Material Received During Processing:

(a) For WRP and ERP applications, including mitigation banks, that meet the criteria of IV.B.1., the Department or District, as applicable, will, within five working days of sending to the applicant, forward one copy of all Requests for Additional Information (RAIs) to the Corps.

(b) For those applications not copied to the Corps in which either state or federal wetlands within the proposed activity or future phases are discovered during the evaluation, the Department or District, as applicable, will, within five working days of this discovery, forward the Corps one copy of the Notice of Receipt of the Application (Section C of the Joint Application) with its accompanying maps, drawings, and activity descriptions, together with a copy of any RAIs that have been generated.

(c) A copy of materials subsequently submitted. Individual Corps offices will coordinate with individual Department and District offices to identify the manner in which the Corps wants such documents forwarded to it.

3. Forwarding Modifications and Materials:

Within five working days of receipt of a modification request, the Department or District, as applicable, will forward to the Corps, either by mail or electronically via a mutually agreed upon protocol, a copy of the request with all attached maps, drawings, and any other information accompanying the request.

4. E-Permitting — For Department or District offices that electronically post applications, RAIs, modifications, and related materials to the Internet, an .ftp site, or another site accessible to the Corps, the Department or District shall first coordinate with the Corps to ensure the electronic posting procedure is compatible with the needs of the Corps. If the Department or the District's electronic posting procedure is not compatible with the Corps's requirements, the Department or District shall continue to mail materials to the Corps.

5. In those cases where the Corps receives a copy of the joint application, an application to modify a permit, a notice to use a noticed general permit, a request to verify qualification for an exemption, or a request to verify that an activity does not require a permit directly from an applicant, the Corps shall retain one copy of the application and all accompanying materials and send all other copies and materials to the appropriate office of the Department or District. The Corps shall include its processing number with this information.

6. The Department or District shall not be obligated to forward documents or materials to the Corps that are confidential under chapter 119, F.S. In such cases the Corps will request the applicant, permittee, or sponsor to provide such information directly to the Corps as needed.

7. In those cases where the Corps has made a "no permit required" (NPR) determination on an application that is under review by the Department or District,

the Corps will furnish a copy of the determination to the Department or District. The Corps will include the applicant's name, location, brief project name/description, and, if known, the Department or District application file number. The Department or District will no longer be required to provide information to the Corps subsequent to receiving this notification unless the project is modified to include additional impacts to wetlands or other surface waters.

C. Mitigation Bank and In-lieu Fee Review

1. Interagency Review Team

Interagency review of mitigation bank applications and establishment of in-lieu fee programs is required by 33 C.F.R. § 332.8(b) and serves to facilitate a more efficient and effective review of such applications. The Corps's District Engineer will establish an Interagency Review Team (IRT) to review documentation for the establishment and management of mitigation banks and in-lieu fee programs. He or his designated representative serves as Chair of the IRT. In cases where a mitigation bank or in-lieu fee program involves an activity that is proposed to satisfy state statutory requirements, it may be appropriate for either the Department or District to serve as Co-Chair of the IRT. For purposes of this Agreement, the "administering agency" is defined as a member of either the Department or the applicable District. The IRT may include representatives from tribal, state, and local regulatory and resource agencies when such agencies have authorities or mandates directly affecting, or affected by, the establishment, operation, or use of the mitigation bank or in-lieu fee program. The District Engineer will give full consideration to any comments and advice received within time limits specified at 33 C.F.R. § 332.8. The Department and the Districts will give full consideration to any comments and advice received within the time limits specified in chapter 120, F.S. The District Engineer retains final authority for the approval of the instruments and other documentation required by the Corps. The Department and the Districts retain final authority for the approval of state permits or other documentation required by the state.

2. Team Coordination

An application to the Department or Districts for a mitigation bank shall be coordinated with the Corps in accordance with the Permit Application Coordination section IV. B. of this Agreement. When the Corps receives a mitigation bank or in-lieu-fee prospectus or draft prospectus, copies shall be provided to the Department or applicable District, along with other IRT members. In addition, the IRT shall coordinate, review, and take action on the items required by 33 C.F.R. § 332.8.

D. Distribution of Agency Actions

For applications that meet the criteria of section IV.B.1, IV.B.2, or IV.B.3 above,

the Department or District, as applicable, will, within five working days of sending to the applicant/permittee, forward to the Corps a copy of all final permitting actions, including copies of permits, formal or major permit modifications, permit denials, application withdrawals, exemption verification letters, and the cover letter for formal determinations.

The Corps shall forward to the Department or Districts, as appropriate, copies of notices of intent to issue standard permits, final actions on standard permits, and "no permit required" determinations within five working days of taking such actions.

V. MITIGATION FINANCIAL ASSURANCE

A. When the type and amount of the financial assurance obtained or required by the Department or District for compensatory mitigation, including mitigation banks, as part of a permit issued under part IV of chapter 373, F.S., adequately addresses the financial assurance requirements of the Corps, the Corps may determine that additional financial assurance is not necessary for that compensatory mitigation project or mitigation bank.

B. The Corps's concurrence with the Department's or District's financial assurance mechanism shall be subject to the applicant, sponsor, or permittee agreeing to the following requirements:

1. The Corps shall notify the Department or District in all cases where the Corps is relying on the financial assurance mechanism accepted by the Department or District so that the Department or District can coordinate with the Corps prior to modification, amendment, partial release, termination, or revocation of the financial assurance instrument.

2. The financial assurance instrument shall be in place prior to commencement of the permitted activity.

3. Disbursements from these financial assurance instruments can only be made with direction and approval of the Department or District as applicable after prior notice has been given to the Corps in accordance with 4., below.

4. The Corps permit shall require that the permittee shall provide the Corps written notice at least 120 days in advance of any termination or revocation of any financial assurance instrument by the financial institution, and notice at least 30 days in advance of modifications, amendments, and partial releases.

C. If, at any time, the Corps determines that the type or amount of the financial assurance mechanism being proposed for a State permit under part IV of chapter 373, F.S., is not sufficient to meet the Corps' requirements for a DA Permit or a mitigation banking instrument or in-lieu fee instrument and those requirements are

within the scope of such state permit, the Corps may require the applicant, sponsor, or permittee for the DA Permit to request that the Department or District modify the permit under part IV of chapter 373, F.S., as applicable, to require an additional amount or alternative type of financial assurance mechanism to meet the Corps' requirements. In such a case:

1. The financial assurance instrument shall be in place prior to commencing the permitted activity;

2. Prior to any disbursements under the financial assurance instruments, the Department or District shall coordinate with the Corps at least 30 days prior to such disbursement being made, but the final decision on the disbursement shall be made by the Department or District;

3. Notification of such disbursements shall be provided to the Corps within 10 days after the disbursement;

4. The Corps permit shall require that the permittee shall provide the Corps written notice at least 120 days in advance of any termination or revocation of any financial assurance instrument by the financial institution, and notice at least 30 days in advance of modifications, amendments, and partial releases.

Notwithstanding the above, the Department or District is not obligated to accept financial assurance mechanisms that are not required to satisfy the permit requirements under part IV of chapter 373, F.S.

D. If the Corps requires an alternative type or an additional amount of financial assurance to meet Corps mitigation requirements outside of the scope of the State permit, the Department or District is not obligated to be a party to any instrument related to that assurance.

VI. MITIGATION SITE PROTECTION

Long-term protection of a mitigation site or preservation to prevent secondary impacts for a State permit, mitigation bank instrument, or as the result of an enforcement action under part IV of chapter 373, F.S., may be provided through the conveyance of a conservation easement or restrictive covenants in accordance with Section 704.06,
F. S., or by transfer of title to the Department or District (hereinafter all referred to as "site protection instrument").

In accordance with 33 C.F.R. § 332.7(a)(1), when such a site protection instrument meets the Corps' requirements for mitigation site protection for the corresponding DA Permit for the same activities, the Corps may agree that the site protection instrument granted to the Department or District provides sufficient site protection, and not require an applicant, sponsor, or permittee to provide an amended, additional, or duplicative mitigation site protection instrument. When the Department or District accepts a site protection instrument in the form of a restrictive covenant or deed

restriction, the Corps may determine that an applicant needs to execute a conservation easement.

A. When the Department or District agrees to hold or amend a site protection instrument which provides rights to the Corps, the Department and District agree to accept a site protection instrument containing, or that is amended to contain, the following language, unless alternative language is needed on a case-specific basis:

> "WHEREAS, the U.S. Army Corps of Engineers Permit No. _____ (Corps Permit) authorizes certain activities in the waters of the United States and requires this site protection instrument over the lands identified in Exhibit XX as mitigation for such activities;
>
> "Rights of the U.S. Army Corps of Engineers ("Corps"): The Corps, as a third party beneficiary, shall have the right to enforce the terms and conditions of the site protection instrument, including:
>
> "1. The right to take action to preserve and protect the environmental value of the Property;
>
> "2. The right to prevent any activity on the Property that is inconsistent with the purpose of this instrument, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity;
>
> "3. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this instrument;
>
> "4. The right to enforce this instrument by injunction or proceed at law or in equity to enforce the provisions of this instrument and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities hereinafter set forth, and the right to require Grantor, or its successors and assigns, to restore such areas or features of the Property that may be damaged by unauthorized activities; and
>
> "5. The Grantor, including their successors or assigns, shall provide the Corps at least 60 days advance notice in writing before any action is taken to amend, alter, release, or revoke this instrument. The Grantee shall provide reasonable notice and an opportunity to comment or object to the release or amendment to the U.S. Army Corps of Engineers. The Grantee shall consider any comments or objections from the U.S. Army Corps of Engineers when making the final decision to release or amend such a conservation easement."

B. When the Corps requires additional protection or additional mitigation lands for an

activity that has a corresponding State permit, mitigation bank instrument, or enforcement instrument under part IV of chapter 373, F.S., and the Department or the District is willing to accept the additional or amended site protection instrument, the instrument shall include the following additional provision:

> "The Grantor, including their successors or assigns, shall provide the Corps at least 60 days advance notice in writing before any action is taken to amend, alter, release, or revoke this instrument. The Grantee shall provide reasonable notice and an opportunity to comment or object to the release or amendment to the U.S. Army Corps of Engineers. The Corps, as third party beneficiary, must approve any amendment, alteration, release or revocation of this instrument, and must approve any proposed structures, work, or activities on the Property that require approval by the Grantee."

C. When the Department or District does not agree or is unable to modify the permit, mitigation bank instrument, or enforcement instrument under part IV of chapter 373, F.S., or any existing site protection instrument to include the additional mitigation land needed to meet the Corps's requirements, the Department or District may agree to accept a separate mitigation site protection instrument over the additional land. If the Department or District agrees to accept a separate mitigation site protection instrument over the additional land, the Department or District agree that the instrument shall be accepted with the following additional provision:

> "The Grantor, including their successors or assigns, shall provide the Corps at least 60 days advance notice in writing before any action is taken to amend, alter, release, or revoke this instrument. The Grantee shall provide reasonable notice and an opportunity to comment or object to the release or amendment to the U.S. Army Corps of Engineers. The Corps, as third party beneficiary, must approve any amendment, alteration, release or revocation of this instrument, and must approve any proposed structures, work, or activities on the Property that require approval by the Grantee."

D. In any case where the Department or District agrees to hold or amend a site protection instrument which provides rights to the Corps, as described above, the Corps shall notify the applicable Department or District office within 10 days of any discovery of a violation of the terms and conditions of the site protection instrument, and shall coordinate with the applicable Department or District office prior to requiring restoration of areas or features of the Property that were damaged by unauthorized activities so that any restoration activities receive applicable authorization required under part IV of chapter 373, F.S.

E. In the event a site protection instrument has already been recorded on behalf of the Department or District for the same activity that will be authorized under a corresponding DA Permit or mitigation bank or in-lieu fee instrument that does not include the "Rights of the Corps" language in VILA., above, the Corps may require the applicant, permittee, or sponsor to request that the Department or District

modify their respective permit, mitigation bank instrument or enforcement instrument with its associated site protection instrument to include that language.

F. The Department and the District do not agree to accept a site protection instrument on behalf of the Corps when there is no corresponding permit under part IV of chapter 373, F.S., for the activity that is subject to a DA permit.

G. In all cases, the Corps shall not request an applicant, permittee, or sponsor to record any site protection instrument granted to the Department or District without first coordinating with and obtaining a letter of concurrence from the applicable office of the Department or District; however, final approval of this request may be required from the District Governing Board. Failure to obtain such written concurrence shall result in any such recorded site protection instrument being considered an invalid conveyance of the interest to the Department or District.

H. In any case when the Corps requires the applicant, permittee, or sponsor to obtain an additional site protection instrument, the Corps agrees to take responsibility for all negotiations with the applicant, permittee, or sponsor associated with processing and preparation of the site protection instrument required by the Corps, including review of the title work. The Corps also shall take responsibility for all steps required to have the site protection instrument recorded, including any subsequent amendments or releases of any site protection instrument previously recorded on behalf of the Department or District, and for sending an original copy of the recorded site protection instrument, and any modifications and releases thereto, to the applicable Department or District office that serves the area in which the site protection instrument is recorded. The Corps also agrees to monitor for compliance and pursue needed enforcement, including litigation, to enforce the terms and conditions of the site protection instrument obtained over any lands that were not required to be protected under the permit, mitigation bank instrument, or enforcement instrument under part IV of chapter 373, F.S.

I. The Parties agree to coordinate in the event compliance monitoring of the protected lands identifies the need for enforcement.

VII. COMPLIANCE AND ENFORCEMENT

Upon discovery of an unauthorized or non-compliant activity in WOUS, wetlands, or other surface waters, the Party discovering the activity will notify the appropriate Party to this Agreement regarding the unauthorized or non-compliant activity. The Parties may coordinate their enforcement activities when appropriate in order to maximize limited agency resources and encourage compliance. Regardless of any coordination that may occur, each Party will maintain independent enforcement authority and discretion.

VIII. INTERAGENCY MEETINGS

A. Permitting Meetings

Subject to fiscal or travel restrictions, each Party agrees to host interagency permitting meetings on a rotating basis. The time and place of all the meetings will be addressed at the beginning of each calendar year. Because interagency meetings between the Parties and other agencies can serve as a good forum to aid communication, exchange information, conduct pre-application meetings, or to resolve outstanding permitting issues, each Party will endeavor to have a representative attend all interagency meetings.

B. Enforcement Meetings

Subject to fiscal or travel restrictions, representatives of the Parties' enforcement staff shall endeavor to meet at least annually. If possible, the meeting should take place at Enforcement Workshops hosted by the Department or District, but local meetings in areas of operation are also appropriate and encouraged. The meeting should address issues related to implementation of section VII of this Agreement.

C. Cross Training

The Parties agree to provide opportunities, when possible, for cross-training. This may take the form of: providing spaces in formally scheduled training courses; providing training sessions at each others' training events; providing personnel and opportunities for cross-training through developmental assignments; sharing interpretations of agency rules and procedures; and performing joint formal and informal training on other subjects of mutual interest.

IX. ELECTRONIC COORDINATION

To the extent practicable, the Parties agree to use electronic media for the transfer of data to facilitate information exchange. The Parties agree to participate in future efforts to enhance electronic communication necessary to achieve their regulatory missions.

X. DELEGATED PROGRAMS

Where the Department or Districts delegate to a local government all or a portion of the permitting or enforcement authority under part IV of chapter 373, F.S., the delegation agreement shall include a provision that the local government shall be subject to all the terms and conditions of this Agreement, although the Corps, with the concurrence of the delegating agency, may allow deviations from these terms and conditions.

XI. EFFECTIVE DATE

This Agreement shall take effect upon execution by all the Parties. In witness whereof, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the latest day and year provided below.

XII. TERMINATION

Any Party who wishes to terminate this Agreement with or without cause shall provide 60 days prior written notice to the other Parties. The notice submitted by the Corps shall be signed by the District Engineer of the Jacksonville District. The notice submitted by a District shall be signed by the Chair of the Governing Board. The notice submitted by the Department shall be signed by the Secretary. By mutual agreement of all Parties, the 60 day notice period may be reduced. Within 30 days of a notice of intent to terminate this Agreement, all Parties shall make good faith efforts to preserve the Agreement by attempting to resolve any basis for the termination. This Agreement also may be terminated by future agreements between the Parties that whi~~ch~~ expressly supersede this Agreement.

Herschel T. Vinyard Jr.
Secretary
Florida Department of
Environmental Protection

9/4/12
Date

Lad Daniels
Chair, Governing Board
St. Johns River Water
Management District

4/10/12
Date

Joe Collins
Chair, Governing Board
South Florida Water
Management District

4/12/2012
Date

Donald J. Quincey, Jr.
Chair, Governing Board
Suwannee River Water
Management District

8-14-12
Date

Hugh M. Gramling
Vice Chair, Governing Board
Southwest Florida Water
Management District

5/22/12
Date

Alan M. Dodd
Colonel, U. S. Army
District Commander

9-4-12
Date

George Roberts
Chair, Governing Board
Northwest Florida Water
Management District

4/30/12
Date

16 USC 668-668d
Bald and Golden Eagle Protection Act

SUBCHAPTER II—PROTECTION OF BALD AND GOLDEN EAGLES

Release date: 2004-04-30

- § 668. Bald and golden eagles
- § 668a. Taking and using of the bald and golden eagle for scientific, exhibition, and religious purposes
- § 668b. Enforcement provisions
- § 668c. Definitions
- § 668d. Availability of appropriations for Migratory Bird Treaty Act

§ 668. Bald and golden eagles

(a) Prohibited acts; criminal penalties
Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle commonly known as the American eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, shall be fined not more than $5,000 or imprisoned not more than one year or both: Provided, That in the case of a second or subsequent conviction for a violation of this section committed after October 23, 1972, such person shall be fined not more than $10,000 or imprisoned not more than two years, or both: Provided further, That the commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation of this section: Provided further, That one-half of any such fine, but not to exceed $2,500, shall be paid to the person or persons giving information which leads to conviction: Provided further, That nothing herein shall be construed to prohibit possession or transportation of any bald eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to June 8, 1940, and that nothing herein shall be construed to prohibit possession or transportation of any golden eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to the addition to this subchapter of the provisions relating to preservation of the golden eagle.
(b) Civil penalties
Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle, commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. In determining the amount of the penalty, the gravity of the violation, and the demonstrated good faith of the person charged shall be considered by the Secretary. For good cause shown, the Secretary may remit or mitigate any such penalty. Upon any failure to pay the penalty assessed under this section, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing any such action, the court must sustain the Secretary's action if supported by substantial evidence.
(c) Cancellation of grazing agreements
The head of any Federal agency who has issued a lease, license, permit, or other agreement authorizing the grazing of domestic livestock on Federal lands to any person who is convicted of a violation of this subchapter or of any permit or regulation issued hereunder may immediately cancel each such lease, license, permit, or other agreement. The United States shall not be liable for the payment of any compensation, reimbursement, or damages in connection with the cancellation of any lease, license, permit, or other agreement pursuant to

this section.

§ 668a. Taking and using of the bald and golden eagle for scientific, exhibition, and religious purposes

Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality, he may authorize the taking of such eagles pursuant to regulations which he is hereby authorized to prescribe: Provided, That on request of the Governor of any State, the Secretary of the Interior shall authorize the taking of golden eagles for the purpose of seasonally protecting domesticated flocks and herds in such State, in accordance with regulations established under the provisions of this section, in such part or parts of such State and for such periods as the Secretary determines to be necessary to protect such interests: Provided further, That bald eagles may not be taken for any purpose unless, prior to such taking, a permit to do so is procured from the Secretary of the Interior: Provided further, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles for the purposes of falconry, except that only golden eagles which would be taken because of depredations on livestock or wildlife may be taken for purposes of falconry: Provided further, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking of golden eagle nests which interfere with resource development or recovery operations.

§ 668b. Enforcement provisions

(a) Arrest; search; issuance and execution of warrants and process
Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this subchapter may, without warrant, arrest any person committing in his presence or view a violation of this subchapter or of any permit or regulations issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this subchapter; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this subchapter, and by said agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this subchapter. Any judge of any court established under the laws of the United States, and any United States magistrate judge may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.
(b) Forfeiture
All bald or golden eagles, or parts, nests, or eggs thereof, taken, possessed, sold, purchased, bartered, offered for sale, purchase, or barter, transported, exported, or imported contrary to the provisions of this subchapter, or of any permit or regulation issued hereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid in the taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bird, or part, nest, or egg thereof, in violation of this subchapter or of any permit or regulation issued hereunder shall be subject to forfeiture to the United States.
(c) Customs laws applied
All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subchapter, insofar as such provisions of law are applicable and not

16 USC 668-668d
Bald and Golden Eagle Protection Act

inconsistent with the provisions of this subchapter: Provided, That all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this subchapter, be exercised or performed by the Secretary of the Interior or by such persons as he may designate.

§ 668c. Definitions

As used in this subchapter "whoever" includes also associations, partnerships, and corporations; "take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb; "transport" includes also ship, convey, carry, or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage, or transportation.

§ 668d. Availability of appropriations for Migratory Bird Treaty Act

Moneys now or hereafter available to the Secretary of the Interior for the administration and enforcement of the Migratory Bird Treaty Act of July 3, 1918 [16 U.S.C. 703 et seq.], shall be equally available for the administration and enforcement of this subchapter.

HABITAT MANAGEMENT GUIDELINES FOR THE WOOD STORK IN THE SOUTHEAST REGION

HABITAT MANAGEMENT GUIDELINES FOR THE WOOD STORK IN THE SOUTHEAST REGION

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HABITAT MANAGEMENT GUIDELINES FOR THE WOOD STORK IN THE SOUTHEAST REGION

Introduction

A number of Federal and state laws and/or regulations prohibit, cumulatively, such acts as harrassing, disturbing, harming, molesting, pursuing, etc., wood storks, or destroying their nests (see Section VII). Although advisory in nature, these guidelines represent a biological interpretation of what would constitute violations of one or more of such prohibited acts. Their purpose is to mainain and/or improve the environmental conditions that are required for the survival and well-being of wood storks in the southeastern United States, and are designed essentially for application in wood stork/human activity conflicts (principally land development and human intrusion into stork use sites). The emphasis is to avoid or minimize detrimental human-related impacts on wood storks. These guidelines were prepared in consultations with state wildlife agencies and wood stork experts in the four southeastern states where the wood stork is listed as Endangered (Alabama, Florida, Georgia, South Carolina).

General

The wood stork is a gregarious species, which nests in colonies (rookeries), and roosts and feeds in flocks, often in association with other species of long-legged water birds. Storks that nest in the southeastern United States appear to represent a distinct population, separate from the nearest breeding population in Mexico. Storks in the southeastern U.S. population have recently (since 1980) nested in colonies scattered throughout Florida, and at several central-southern Georgia and coastal South Carolina sites. Banded and color-marked storks from central and southern Florida colonies have dispersed during non-breeding seasons as far north as southern Georgia, and the coastal counties in South Carolina and southeastern North Carolina, and as far west as central Alabama and northeastern Mississippi. Storks from a colony in south-central Georgia have wintered between southern Georgia and southern Florida. This U.S. nesting population of wood storks was listed as endangered by the U.S. Fish and Wildlife Service on February 28, 1984 (*Federal Register* 49(4):7332-7335).

Wood storks use freshwater and estuarine wetlands as feeding, nesting, and roosting sites. Although storks are not habitat specialists, their needs are exacting enough, and available habitat is limited enough, so that nesting success and the size of regional populations are closely regulated by year-to-year differences in the quality and quantity of suitable habitat. Storks are especially sensitive to environmental conditions at feeding sites; thus, birds may fly relatively long distances either daily or between regions annually, seeking adequate food resources.

All available evidence suggests that regional declines in wood stork numbers have been largely due to the loss or degradation of essential wetland habitat. An understanding of the qualities of good stork habitat should help to focus protection efforts on those sites

that are seasonally important to regional populations of wood storks. Characteristics of feeding, nesting, and roosting habitat, and management guidelines for each, are presented here by habitat type.

I. Feeding habitat.

A major reason for the wood stork decline has been the loss and degredation of feeding habitat. Storks are especially sensitive to any manipulation of a wetland site that results in either reduced amounts or changes in the timing of food availability.

Storks feed primarily (often almost exclusively) on small fish between 1 and 8 inches in length. Successful foraging sites are those where the water is between 2 and 15 inches deep. Good feeding conditions usually occur where water is relatively calm and uncluttered by dense thickets of aquatic vegetation. Often a dropping water level is necessary to concentrate fish at suitable densities. Conversely, a rise in water, especially when it occurs abruptly, disperses fish and reduces the value of a site as feeding habitat.

The types of wetland sites that provide good feeding conditions for storks include: drying marshes or stock ponds, shallow roadside or agricultural ditches, narrow tidal creeks or shallow tidal pools, and depressions in cypress heads or swamp sloughs. In fact, almost any shallow wetland depression where fish tend to become concentrated, either through local reproduction or the consequences of area drying, may be used by storks.

Nesting wood storks do most of their feeding in wetlands between 5 and 40 miles from the colony, and occasionally at distances as great as 75 miles. Within this colony foraging range and for the 110-150 day life of the colony, and depending on the size of the colony and the nature of the surrounding wetlands, anywhere from 50 to 200 different feeding sites may be used during the breeding season.

Non-breeding storks are free to travel much greater distances and remain in a region only for as long as sufficient food is available. Whether used by breeders or non-breeders, any single feeding site may at one time have small or large numbers of storks (1 to 100+), and be used for one to many days, depending on the quality and quantity of available food. Obviously, feeding sites used by relatively large numbers of storks, and/or frequently used areas, potentially are the more important sites necessary for the maintenance of a regional population of birds.

Differences between years in the seasonal distribution and amount of rainfall usually mean that storks will differ between years in where and when they feed. Successful nesting colonies are those that have a large number of feeding site options, including sites that may be suitable only in years of rainfall extremes. To maintain the wide range of feeding site options requires that many different wetlands, with both relatively short and long annual hydroperiods, be preserved. For example, protecting only the larger wetlands, or those with longer annual hydroperiods, will result in the eventual loss of smaller, seemingly less important wetlands. However, these small scale wetlands are crucial as the only available feeding sites during the wetter periods when the larger habitats are too deeply flooded to be used by storks.

II. Nesting habitat.

Wood storks nest in colonies, and will return to the same colony site for many years so long as that site and surrounding feeding habitat continue to supply the needs of the birds. Storks require between 110 and 150 days for the annual nesting cycle, from the period of courtship until the nestlings become independent. Nesting activity may begin as early as December or as late as March in southern Florida colonies, and between late February and April in colonies located between central Florida and South Carolina. Thus, full term colonies may be active until June-July in south Florida, and as late as July-August at more northern sites. Colony sites may also be used for roosting by storks during other times of the year.

Almost all recent nesting colonies in the southeastern U.S. have been located either in woody vegetation over standing water, or on islands surrounded by broad expanses of open water. The most dominant vegetation in swamp colonies has been cypress, although storks also nest in swamp hardwoods and willows. Nests in island colonies may be in more diverse vegetation, including mangroves (coastal), exotic species such as Australian pine (*Casuarina*) and Brazilian Pepper (*Schinus*), or in low thickets of cactus (*Opuntia*). Nests are usually located 15-75 feet above ground, but may be much lower, especially on island sites when vegetation is low.

Since at least the early 1970's, many colonies in the southeastern U.S. have been located in swamps where water has been impounded due to the construction of levees or roadways. Storks have also nested in dead and dying trees in flooded phosphate surface mines, or in low, woody vegetation on mounded, dredge islands. The use of these altered wetlands or completely "artificial" sites suggests that in some regions or years storks are unable to locate natural nesting habitat that is adequately flooded during the normal breeding season. The readiness with which storks will utilize water impoundments for nesting also suggests that colony sites could be intentionally created and maintained through long-term site management plans. Almost all impoundment sites used by storks become suitable for nesting only fortuitously, and therefore, these sites often do not remain available to storks for many years.

In addition to the irreversible impacts of drainage and destruction of nesting habitat, the greatest threats to colony sites are from human disturbance and predation. Nesting storks show some variation in the levels of human activity they will tolerate near a colony. In general, nesting storks are more tolerant of low levels of human activity near a colony when nests are high in trees than when they are low, and when nests contain partially or completely feathered young than during the period between nest construction and the early nestling period (adults still brooding). When adult storks are forced to leave their nests, eggs or downy young may die quickly (<20 minutes) when exposed to direct sun or rain.

Colonies located in flooded environments must remain flooded if they are to be successful. Often water is between 3 and 5 feet deep in successful colonies during the nesting season. Storks rarely form colonies, even in traditional nesting sites, when they are dry, and may abandon nests if sites become dry during the nesting period. Flooding in colonies may be most important as a defense against mammalian predators. Studies of stork colonies in Georgia and

Florida have shown high rates of raccoon predation when sites dried during the nesting period. A reasonably high water level in an active colony is also a deterrent against both human and domestic animal intrusions.

Although nesting wood storks usually do most feeding away from the colony site (>5 miles), considerable stork activity does occur close to the colony during two periods in the nesting cycle. Adult storks collect almost all nesting material in and near the colony, usually within 2500 feet. Newly fledged storks, near the end of the nesting cycle, spend from 1-4 weeks during the fledging process flying locally in the colony area, and perched in nearby trees or marshy spots on the ground. These birds return daily to their nests to be fed. It is essential that these fledging birds have little or no disturbance as far our as one-half mile within at least one or two quadrants from the colony. Both the adults, while collecting nesting material, and the inexperienced fledglings, do much low, flapping flight within this radius of the colony. At these times, storks potentially are much more likely to strike nearby towers or utility lines.

Colony sites are not necessarily used annually. Regional populations of storks shift nesting locations between years, in response to year-to-year differences in food resources. Thus, regional populations require a range of options for nesting sites, in order to successfully respond to food availability. Protection of colony sites should continue, therefore, for sites that are not used in a given year.

III. **Roosting habitat.**

Although wood storks tend to roost at sites that are similar to those used for nesting, they also use a wider range of site types for roosting than for nesting. Non-breeding storks, for example, may frequently change roosting sites in response to changing feeding locations, and in the process, are inclined to accept a broad range of relatively temporary roosting sites. Included in the list of frequently used roosting locations are cypress "heads" or swamps (not necessarily flooded if trees are tall), mangrove islands, expansive willow thickets or small, isolated willow "islands" in broad marshes, and on the ground either on levees or in open marshes.

Daily activity patterns at a roost vary depending on the status of the storks using the site. Non-breeding adults or immature birds may remain in roosts during major portions of some days. When storks are feeding close to a roost, they may remain on the feeding grounds until almost dark before making the short flight. Nesting storks traveling long distances (>40 miles) to feeding sites may roost at or near the latter, and return to the colony the next morning. Storks leaving roosts, especially when going long distances, tend to wait for mid-morning thermals to develop before departing.

IV. **Management zones and guidelines for feeding sites.**

To the maximum extent possible, feeding sites should be protected by adherence to the following protection zones and guidelines:

A. There should be no human intrusion into feeding sites when storks are present. Depending upon the amount of screening vegetation, human activity should be no closer than between 300 feet (where solid vegetation screens exist) and 750 feet (no vegetation screen).

B. Feeding sites should not be subjected to water management practices that alter traditional water levels or the seasonally normal drying patterns and rates. Sharp rises in water levels are especially disruptive to feeding storks.

C. The introduction of contaminants, fertilizers, or herbicides into wetlands that contain stork feeding sites should be avoided, especially those compounds that could adversely alter the diversity and numbers of native fishes, or that could substantially change the characteristics of aquatic vegetation. Increase in the density and height of emergent vegetation can degrade or destroy sites as feeding habitat.

D. Construction of tall towers (especially with guy wires) within three miles, or high power lines (especially across long stretches of open country) within one mile of major feeding sites should be avoided.

V. **Management zones and guidelines for nesting colonies.**

A. Primary zone: This is the most critical area, and must be managed according to recommended guidelines to insure that a colony site survives.

1. Size: The primary zone must extend between 1000 and 1500 feet in all directions from the actual colony boundaries when there are no visual or broad aquatic barriers, and never less than 500 feet even when there are strong visual or aquatic barriers. The exact width of the primary zone in each direction from the colony can vary within this range, depending on the amount of visual screen (tall trees) surrounding the colony, the amount of relatively deep, open water between the colony and the nearest human activity, and the nature of the nearest human activity. In general, storks forming new colonies are more tolerant of existing human activity, than they will be of new human activity that begins after the colony has formed.

2. Recommended Restrictions:

a. Any of the following activities within the primary zone, at any time of the year, are likely to be detrimental to the colony:

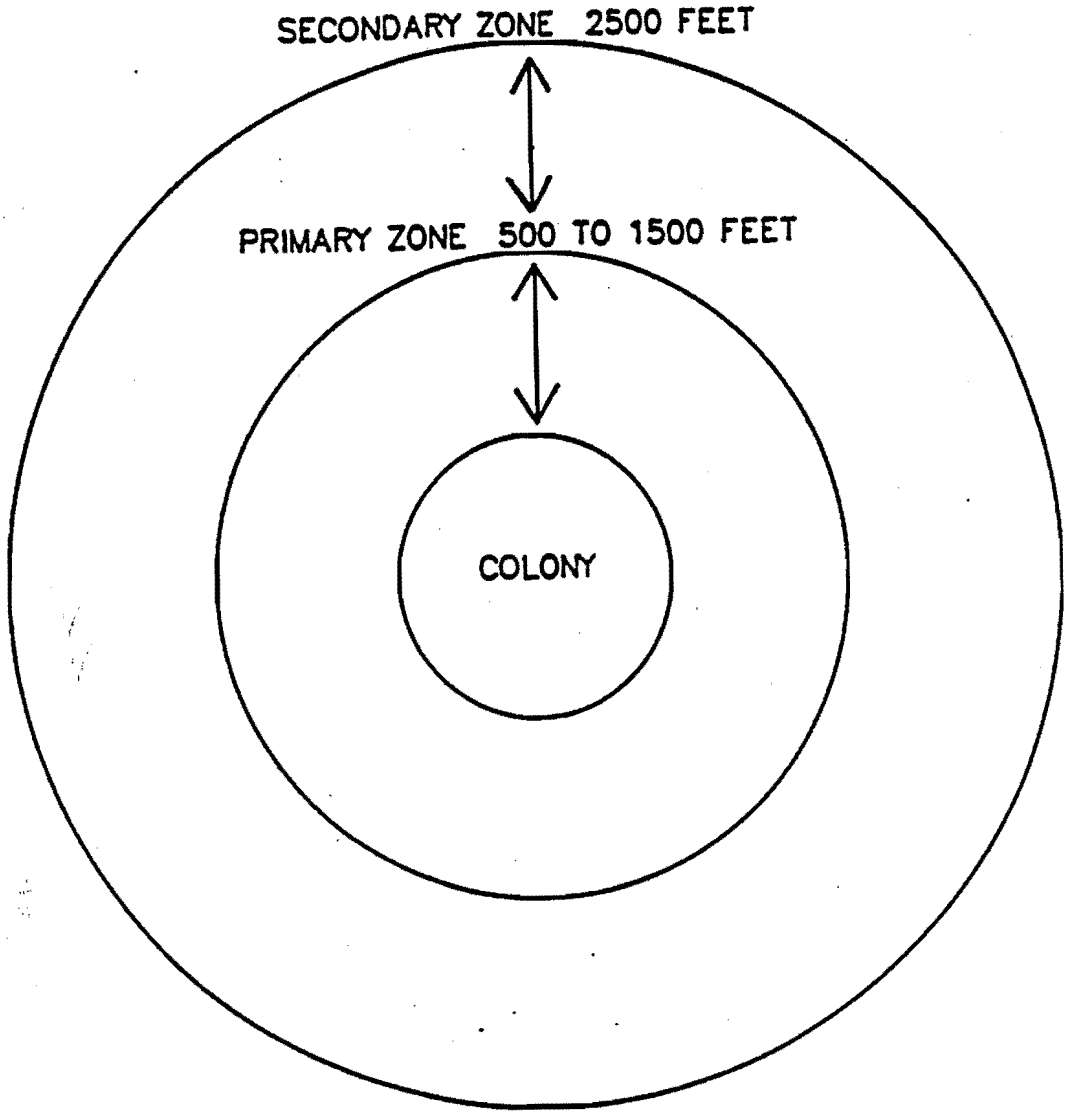
(1) Any lumbering or other removal of vegetation, and

(2) Any activity that reduces the area, depth, or length of flooding in wetlands under and surrounding the colony, except where periodic (less than annual) water control may be required to maintain the health of the aquatic, woody vegetation, and

(3) The construction of any building, roadway, tower, power line, canal, etc.

b. The following activities within the primary zone are likely to be detrimental to a colony if they occur when the colony is active:

(1) Any unauthorized human entry closer than 300 feet of the colony, and


SECONDARY ZONE 2500 FEET
PRIMARY ZONE 500 TO 1500 FEET
COLONY

(2) Any increase or irregular pattern in human activity anywhere in the primary zone, and

(3) Any increase or irregular pattern in activity by animals, including livestock or pets, in the colony, and

(4) Any aircraft operation closer than 500 feet of the colony.

B. Secondary Zone: Restrictions in this zone are needed to minimize disturbances that might impact the primary zone, and to protect essential areas outside of the primary zone. The secondary zone may be used by storks for collecting nesting material, for roosting, loafing, and feeding (especially important to newly fledged young), and may be important as a screen between the colony and areas of relatively intense human activities.

1. Size: The secondary zone should range outward from the primary zone 1000-2000 feet, or to a radius of 2500 feet of the outer edge of the colony.

2. Recommended Restrictions:

a. Activities in the secondary zone which may be detrimental to nesting wood storks include:

(1) Any increase in human activities above the level that existed in the year when the colony first formed, especially when visual screens are lacking, and

(2) Any alteration in the area's hydrology that might cause changes in the primary zone, and

(3) Any substantial (>20 percent) decrease in the area of wetlands and woods of potential value to storks for roosting and feeding.

b. In addition, the probability that low flying storks, or inexperienced, newly-fledged young will strike tall obstructions, requires that high-tension power lines be no closer than one mile (especially across open country or in wetlands) and tall trans-mission towers no closer than 3 miles from active colonies. Other activities, including busy highways and commercial and residential buildings may be present in limited portions of the secondary zone at the time that a new colony first forms. Although storks may tolerate existing levels of human activities, it is important that these human activities not expand substantially.

VI. Roosting site guidelines.

The general characteristics and temporary use-patterns of many stork roosting sites limit the number of specific management recommendations that are possible:

A. Avoid human activities within 500-1000 feet of roost sites during seasons of the year and times of the day when storks may be present. Nocturnal activities in active roosts may be especially disruptive.

B. Protect the vegetative and hydrological characteristics of the more important roosting sites--those used annually and/or used by flocks of 25 or more storks. Potentially, roosting sites may, some day, become nesting sites.

VII. Legal Considerations.

A. Federal Statutes

The U.S. breeding population of the wood stork is protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)(Act). The population was listed as endangered on February 28, 1984 (49 Federal *Register* 7332); wood storks breeding in Alabama, Florida, Georgia, and South Carolina are protected by the Act.

Section 9 of the Endangered Species Act of 1973, as amended, states that it is unlawful for any person subject to the jurisdiction of the United States to take (defined as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.") any listed species anywhere within the United States.

The wood stork is also federally protected by its listing (50 CFR 10.13) under the Migratory Bird Treaty Act (167 U.S.C. 703-711), which prohibits the taking, killing or possession of migratory birds except as permitted.

B. State Statutes

1. State of Alabama

Section 9-11-232 of Alabama's Fish, Game, and Wildlife regulations curtails the possession, sale, and purchase of wild birds. "Any person, firm, association, or corporation who takes, catches, kills or has in possession at any time, living or dead, any protected wild bird not a game bird or who sells or offers for sale, buys, purchases or offers to buy or purchase any such bird or exchange same for anything of value or who shall sell or expose for sale or buy any part of the plumage, skin, or body of any bird protected by the laws of this state or who shall take or willfully destroy the nests of any wild bird or who shall have such nests or eggs of such birds in his possession, except as otherwise provided by law, shall be guilty of a misdemeanor...

Section 1 of the Alabama Nongame Species Regulation (Regulation 87-GF-7) includes the wood stork in the list of nongame species covered by paragraph (4). " It shall be unlawful to take, capture, kill, possess, sell, trade for anything of monetary value, or offer to sell or trade for anything of monetary value, the following nongame wildlife species (or any parts or reproductive products of such species) without a scientific collection permit and written permission from the Commissioner, Department of Conservation and Natural Resources,..."

2. State of Florida

Rule 39-4.001 of the Florida Wildlife Code prohibits "taking, attempting to take; pursuing, hunting, molesting, capturing, or killing (collectively defined as "taking"), transporting, storing, serving, buying, selling,

possessing, or wantonly or willingly wasting any wildlife or freshwater fish or their nests, eggs, young, homes, or dens except as specifically provided for in other rules of Chapter 39, Florida Administrative Code.

Rule 39-27.011 of the Florida Wildlife Code prohibits "killing, attempting to kill, or wounding any endangered species." The "Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida" dated 1 July 1988, includes the wood stork, listed as "endangered" by the Florida Game and Fresh Water Fish Commission.

3. State of Georgia

Section 27-1-28 of the Conservation and Natural Resources Code states that "Except as otherwise provided by law, rule, or regulation, it shall be unlawful to hunt, trap, fish, take, possess, or transport any nongame species of wildlife..."

Section 27-1-30 states that, "Except as otherwise provided by law or regulation, it shall be unlawful to disturb, mutilate, or destroy the dens, holes, or homes of any wildlife; "

Section 27-3-22 states, in part, "It shall be unlawful for any person to hunt, trap, take, possess, sell, purchase, ship, or transport any hawk, eagle, owl, or any other bird or any part, nest, or egg thereof...".

The wood stork is listed as endangered pursuant to the Endangered Wildlife Act of 1973 (Section 27-3-130 of the Code). Section 391-4-13-.06 of the Rules and Regulations of the Georgia Department of Natural Resources prohibits harassment, capture, sale, killing, or other actions which directly cause the death of animal species protected under the Endangered Wildlife Act. The destruction of habitat of protected species on public lands is also prohibited.

4. State of South Carolina

Section 50-15-40 of the South Carolina Nongame and Endangered Species Conservation Act states, "Except as otherwise provided in this chapter, it shall be unlawful for any person to take, possess, transport, export, process, sell, or offer of sale or ship, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists: (1) the list of wildlife indigenous to the State, determined to be endangered within the State...(2) the United States' List of Endangered Native Fish and Wildlife... (3) the United States' List of Endangered Foreign Fish and Wildlife ..."

BALD EAGLE MANAGEMENT PLAN

Haliaeetus leucocephalus

Adopted:
April 9, 2008

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
620 South Meridian Street
Tallahassee, Florida 32399-1600

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EXECUTIVE SUMMARY

The dramatic recovery of the bald eagle (*Haliaeetus leucocephalus*) in the past 35 years represents one of the great conservation success stories in our nation's history. This management plan provides the framework for the conservation and management of the bald eagle in Florida to ensure its continued recovery. This plan meets the requirements of the Florida Fish and Wildlife Conservation Commission's (FWC) listing process (Rule 68A-27.0012, *Florida Administrative Code* [F.A.C.]). The listing process was initiated in July 2002, when the FWC was petitioned to reevaluate the status of the bald eagle, which was considered a threatened species in Florida (Rule 68A-27.004, F.A.C.). Action on the petition was delayed due to a listing moratorium, which was lifted in April 2005.

Following the guidance of FWC's listing process, a five-member biological review panel was approved in June 2005. The panel assessed the eagle's population and distribution data against species-imperilment criteria (Rule 68A-1.004, F.A.C.), and determined that the bald eagle no longer met the criteria for state listing at any level. As a result, the panel unanimously recommended that the bald eagle be removed from Florida's list of imperiled species. The panel also acknowledged the importance of protecting nest sites, and suggested that continued protection of nesting habitats was necessary to sustain recovery of the species (Sullivan *et al.* 2006). The decision to delist the bald eagle in Florida is based on the following biological data: (1) bald eagles occur throughout the state; (2) the population does not experience extreme fluctuations in distribution or numbers; (3) the estimated number of adults has increased more than 300% during the past three eagle generations (defined in this document as a total of 24 years); and (4) the population is not expected to experience significant declines over the next 24 years.

The continental bald eagle population began to decline in the 18th century as a result of habitat loss and direct persecution. The decline intensified during the mid-20th century with widespread use of organochlorine pesticides such as DDT compounding the losses from habitat destruction and shooting. DDT was used widely in the U.S. until it was banned in 1972, in part because it caused eggshell thinning in raptors, resulting in widespread reproductive failure.

Bald eagles reclaimed their entire historic range by the late 1990s, and their estimated population in the Lower 48 states increased from an estimated 417 pairs in 1963 to 9,789 pairs by 2007. Bald eagles have met or exceeded the population goals established in each of the five regional recovery plans, and in August 2007, the U.S. Fish and Wildlife Service (USFWS) removed the species from the list of species protected by the Endangered Species Act. The USFWS recovery plan for the southeastern United States established 400 bald eagle nesting territories as the number necessary to down-list the Florida population from endangered to threatened, and 1,000 nesting territories in the state as one criterion for delisting the eagle nationally. By early 2007, there were 1,218 active bald eagle nesting territories in Florida (FWC unpublished data).

The goal of this management plan is to maintain a stable or increasing population of bald eagles throughout Florida in perpetuity. To achieve this goal, bald eagles and their nests must continue to be protected through science-based management, regulation, public education, and law enforcement. Continued conservation efforts are required to prevent a population decline of 10% or more that might trigger a re-evaluation for relisting the bald eagle. To maintain the

conservation goal, this management plan establishes four conservation objectives that will be calculated annually as five-year running averages. All of these objectives have already been met, and maintaining these objectives will assure that the goal of this management plan is met: (1) a minimum of 1,020 nesting territories per year over the next 24 years; (2) an average of 68% of nesting territories producing ≥1 nestling per year; (3) an average reproductive success of ≥1.5 fledglings per active nest; and (4) maintain the current area of occupancy (>770 mi^2) and extent of occurrence (52,979 mi^2) of eagles statewide.

In addition to being our national symbol, reasons for continued conservation, management, and monitoring of Florida's bald eagles include the following: (1) Florida supports 11% of the nesting population in the Lower 48 states, more than any state other than Alaska and Minnesota; (2) 67% of all eagle nests in the state are located on private lands; (3) disturbance can negatively affect the reproductive success of nesting eagles; (4) growth of Florida's human population assures continued encroachment into eagle nesting and foraging habitats; and (5) the public insists on continued conservation of this magnificent species. The FWC's biological review panel determined that Florida's eagle population would not experience significant declines over the next three generations, but acknowledged that protection of nest sites should continue. This plan proposes continued regulation of nesting habitats during the first five years following delisting. The FWC will monitor Florida's eagle population and will study the effects of human activities near eagle nests. After five years, results of this research will be evaluated and regulations will be adjusted as appropriate.

To ensure that the conservation goal and objectives continue to be met, this management plan recommends a suite of conservation actions. These actions are best accomplished by applying an adaptive management approach that allows adjustment to policies, guidelines, and techniques based on science and observed responses to implemented conservation measures. The conservation actions are organized into the following sections or sub-sections: Habitat Management, Land Acquisition, Private Lands Incentives, Law Enforcement, Proposed Regulations, Permitting Framework April 2008, Local Government Coordination, Monitoring Plan, Education and Outreach, and Ongoing and Future Research.

Management of bald eagles in Florida through the implementation of this plan requires the cooperation of local, state, and federal governmental agencies; non-governmental organizations; business, agricultural, and forestry interests; universities; and the public. This plan was developed by the FWC in collaboration with a diverse group of stakeholders, and its successful implementation requires the cooperation of and coordination with other agencies, organizations, private interests, and individuals. Any significant changes to this management plan will be made with the involvement of our stakeholders.

The FWC formally solicited public comment and peer-review on the proposed delisting action of the bald eagle in Florida at several junctures of the delisting process and the writing of this management plan. Comment periods were noticed in the *Florida Administrative Weekly* to solicit: (1) information on the bald eagle's biological status to be considered during the development of the Biological Status Report for the Bald Eagle (Sullivan *et al.* 2006); (2) information on the management needs of the eagle and any economic, social, and ecological factors to consider as part of its management; and (3) public and stakeholder input on drafts of

the management plan. Public comments also were received following release of the Biological Status Report for the Bald Eagle in 2006, and at the September 2007 FWC Commission meeting when a draft of this Bald Eagle Management Plan and its associated rule changes were presented to the Commissioners and received conceptual approval. Following this meeting, the FWC created an "ad-hoc" committee of some of its most active bald eagle stakeholders, and this committee met several times into early 2008 to assist the FWC in resolving issues remaining with regulation and management of the state's bald eagle population.

Five years following approval of this plan, the FWC and its stakeholders will re-evaluate the biological status of the bald eagle in Florida. If nest-monitoring data suggest that modification of guidelines for the regulation of land uses surrounding eagle nests may be appropriate, then this management plan will be revised accordingly.

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GLOSSARY AND ACRONYMS

Abandoned Nest: A bald eagle nest that is intact or partially intact but has been inactive through six or more consecutive nesting seasons. While the buffer zone surrounding the nest is no longer protected, the nest itself may not be altered. *Compare with Alternate Nest.*

Active Nest: A nest that shows or showed evidence of breeding by bald eagles, such as an adult attending the nest or in incubating position, a clutch of eggs, or a brood of nestlings, at any time during the current or most recent nesting season.

Active Territory: A bald eagle nesting territory that contains or contained an active nest at any time during the current or most recent nesting season.

Adaptive Management: A decision process that promotes flexible decision-making that can be adjusted as outcomes from management actions and other events are better understood. Adaptive management recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a "trial and error" process, but rather emphasizes "learning while doing."

Alternate Nest: A bald eagle nest that is intact or partially intact and has been used by bald eagles at any time during the past five nesting seasons, but that was not used during the current or most recent nesting season. An inactive nest is considered to be an alternate nest until it has been inactive for five consecutive nesting seasons, at which time it becomes an Abandoned Nest. Bald eagles often build multiple nests within their territory, but usually only one will be used for nesting in any given nesting season. *Compare with Abandoned Nest.*

Area of Occupancy: The smallest area of suitable habitats essential at any stage to the survival of bald eagles in Florida, based on the presumption that each active nesting territory contains 397–794 acres (1–2 km^2). Based on 1,101 known active territories, the Area of Occupancy of bald eagles in Florida was estimated to be between 658 and 1,275 mi^2 in early 2005 (Sullivan *et al.* 2006, Figure 2). To qualify for listing as a species of special concern in Florida, a species must have an area of occupancy of <700 square miles. *See also Extent of Occurrence*.

Bald and Golden Eagle Protection Act: The federal law enacted in 1940 that now serves as the primary protection for bald eagles nationally now that the eagle has been removed from protection under the U.S. Endangered Species Act.

Bald Eagle Conservation Fund: A fund to be established between the FWC and the Wildlife Foundation of Florida to collect "monetary contributions" (conservation funds) from the issuing of FWC Eagle Permits to applicants whose projects impact buffer zones of active or alternate bald eagle nests. Each year, the amount charged will change by an amount equal to the annual Consumer Price Index for the Southeast region, and will be based on changes during the CPU calendar year (1 January–31 December). The appropriate change to the monetary contribution should take effect on 1 March of each year because the CPI

for the previous year is usually not available until mid-February. The contribution will be calculated based on the date that a completed application is received by FWC.

Breeding Productivity: The number of nestlings produced by an eagle pair or population. Nestlings should be surveyed just before they fledge. The recommended procedure for determining breeding productivity is to divide the number of nestlings produced by the number of active nesting territories. *Compare with Reproductive Success.*

Communal Roost: An area where bald eagles gather and perch overnight, or and sometimes during the day during inclement weather. Communal roosts are usually in large trees (alive or dead) that are close to foraging areas. Communal roosts are rare in Florida.

Conservation Measures: One or more actions provided by landowners to benefit bald eagles in exchange for a permit to conduct an activity within the buffer zone of an active or alternate bald eagle nest in Florida..

Core Nesting Area: One of 16 regions in Florida that contains a high density of bald eagle nesting territories (Figure 3, page 7). Together, the core areas support a majority of the state's known active nesting territories. The core nesting areas are numbered chronologically from the year of discovery and are located in the following regions: (1) lakes Lochloosa, Newnans, and Orange in Alachua County; (2) Lake George in Lake, Marion, Putnam, and Volusia counties; (3) the middle St. Johns River in Brevard, Seminole, and Volusia counties; (4) the Kissimmee chain of lakes in Osceola and Polk counties; (5) the Placida Peninsula in Charlotte and Sarasota counties; (6) the Harris chain of lakes in Lake, Marion, and Sumter counties; (7) the Lee County coast; (8) St. Vincent National Wildlife Refuge in Franklin County; (9) St. Marks National Wildlife Refuge in Wakulla County; (10) the Lower St. Johns River in Clay, Flagler, and St. Johns counties; (11) Rodman Reservoir in Marion and Putnam counties; (12) the central Gulf Coast in Citrus, Hernando, and Pasco counties; (13) central Polk County; (14) Lake Istokpoga in Highlands County; (15) the northeast shore of Lake Okeechobee in Martin and Okeechobee counties; and (16) coastal Charlotte County.

Development of Regional Impact: A development that is likely to have regional effects beyond the local government jurisdiction in which it is located.

Disturb: (as defined by USFWS (2007b): "To agitate or bother a bald or golden eagle to the degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

Endangered Species Act: The federal law enacted in 1973 that offered primary protection nationally to bald eagles. When the bald eagle was removed from the list of species protected under the Endangered Species Act on 8 August 2007, the Bald and Golden Eagle Protection Act became the primary protection to eagles nationwide.

Extent of Occurrence: The area contained within a minimum convex polygon encompassing all known nesting territories. Based on 1,101 known active territories, the Extent of Occurrence of bald eagles in Florida was estimated to be 52,979 mi^2 in early 2005 (Sullivan *et al.* 2006). To qualify for listing as a species of special concern in Florida, a species must have an extent of occurrence of <7,700 mi^2. *See also Area of Occupancy*.

Exterior Construction: All construction and related work for homes or other buildings, including roads, sewer and water lines, powerlines, fill, or excavation work.

F.A.C.: Florida Administrative Code.

Fledgling: A young eagle that is capable of flight and that has left the nest, usually at 10–12 weeks of age. Fledglings may return to the nest for several weeks to be fed or to roost. *Compare with Nestling*.

FWC: The Florida Fish and Wildlife Conservation Commission, the state agency legally mandated to protect and manage Florida's native wildlife resources.

FWC Eagle Permit: A permit issued by the FWC to allow for activities that would otherwise be prohibited by law, such as disturbance, nest removal, capture for rehabilitation, or scientific collection. Some activities require conservation measures to be conducted before a permit will be issued. Because the USFWS has yet to finalize its permitting process, the relationship between state and federal permits remains to be determined, but the need for duplicative permits will be minimized to the greatest extent possible.

Harass: *see Disturb*.

Harm: *see Disturb*.

Inactive Nest: A bald eagle nest that was not used during the current or most recent nesting season. *See Abandoned Nest and Alternate Nest*.

Inactive Territory: A bald eagle nesting territory that does not contain an active nest during the current or most recent nesting season.

Interior Construction: Any activity or related work for homes or other buildings that is carried out inside a building that has completed exterior walls, roof, windows, and doors.

Land Development Code: Any ordinance that regulates development.

Local Government: Any agency or governmental body including state agencies such as the Florida Department of Environmental Protection and the five water management districts.

Lost Nest: A nest that is no longer present from natural causes (*e.g.*, one that fell apart or was blown out of a tree). In some cases, the nest tree itself may be lost. The FWC recommendations in the section entitled Permitting Framework April 2008 section apply

to lost nests through two complete, consecutive nesting seasons. *Compare with Abandoned Nest*.

Nest: A structure of sticks created, modified, or used by bald eagles for reproduction, whether or not reproduction was successful. Most nests are in living trees, but some nests are built in snags, on communication towers or other artificial structures, or on the ground. Most eagle territories contain more than one nest; the average across the eagle's range is 1.5 nests/territory. *See also Abandoned Nest, Active Nest, Alternate Nest, Lost Nest, and Unknown Nest*.

Nesting Season: In Florida, the period 1 October–15 May, unless the young fledge before or after 15 May.

Nesting Success: *See Breeding Productivity and Reproductive Success*.

Nesting Territory: The area associated with one breeding pair of bald eagles and that contains one or more nests. In rare cases, a nesting territory may lack a nest at the time of the survey, as when the nest is destroyed by severe weather.

Nestling: A young eagle (eaglet) that is incapable of flight and that is dependent on its parents. Once an eaglet fledges (*i.e.*, leaves the nest), it becomes a fledgling.

Non-Injurious Disturbance: Persistent and intentional disturbance to disperse bald eagles from a site, such as an airport or a fish hatchery, without physical capture or direct handling, or by any means likely to cause injury.

Permanent Activity: Any activity expected to disturb bald eagles during two or more nesting seasons.

Reproductive Success: The number of fledglings produced annually by a bald eagle pair. *Compare with Breeding Productivity*.

Scientific Collection Permit: A permit issued for activities that include salvage, voucher, bird banding, wildlife possession, or special purpose. Applications must demonstrate a scientific or educational benefit for bald eagles, and must identify the purpose, scope, objective, methodology, location, and duration of the project.

Similar scope: A measure comparing activities near bald eagle nests. An existing activity near a bald eagle nest is of similar scope to a proposed activity, when the project is similar in nature, size, and use.

Site Work: Construction activities such as land clearing or road building that precede construction of homes or other building.

Successful Nest: A bald eagle nest that produces at least one fledgling.

"Take" (as defined in 68A-1.004 F.A.C.): "Taking, attempting to take, pursuing, hunting, molesting, capturing, or killing any wildlife or freshwater fish, or their nests or eggs by any means whether or not such actions result in obtaining possession of such wildlife or freshwater fish or their nests or eggs."

Temporary Activity: 1) Outside the nesting season: any activity that will leave no permanent structure or have any permanent effect. 2) During the nesting season: any activity expected to disturb bald eagles during only one nesting season.

Unknown Nest: A bald eagle nest that was surveyed (usually only once) during the current or most recent nesting season, but that its status could not be determined.

U.S.C.: United States Code.

USFWS: The United States Fish and Wildlife Service, the federal agency mandated to protect and manage the nation's native wildlife resources.

CHAPTER 1: BIOLOGICAL BACKGROUND

The bald eagle (*Haliaeetus leucocephalus*) is the symbol of the United States and one of North America's most spectacular birds. It is also one of the most thoroughly studied birds, with perhaps 2,500 articles published on its biology or management (Buehler 2000). This chapter summarizes some aspects of the bald eagle's biology, primarily in Florida. Detailed information on the biology of bald eagles throughout their range is found in Stalmaster (1987), Gerrard and Bortolotti (1988), and Buehler (2000).

Distinguishing Characteristics

The bald eagle is the largest raptor (bird of prey) that occurs in North America, ranging from 28 to 38 inches in length and with a wingspan from 66 to 96 inches. The largest eagles are found in Alaska and the smallest occur in the southern United States and Mexico (Buehler 2000). The sexes are indistinguishable by plumage, but females are as much as 25% larger than males. Adults are dark brown with a white head and tail. The eyes, bill, legs, and feet are yellow. Juveniles are dark brown overall with white mottling on the belly, tail, and underwings. The eyes are dark brown and the bill is gray to black. The plumage of sub-adults is highly variable, according to age, with a decreasing amount of white on the body and an increasing amount of white on the head and tail attained with each successive molt. The eyes and bill turn yellow during the eagle's fourth year, and full adult plumage is attained during the bird's fifth or (usually) sixth year (Buehler 2000).

Taxonomy

The bald eagle is a member of the family Accipitridae and the order Falconiformes. It is one of eight members of the genus *Haliaeetu*s, which is from the Greek and means *sea eagle*; the bald eagle's full scientific name means *white-headed sea eagle*. The bald eagle is the only member of its genus that occurs regularly in North America. Two other species, the white-tailed eagle (*H. albicilla*) of Eurasia and the Steller's sea-eagle (*H. pelagicus*) of Asia, have strayed to the United States, and the white-tailed eagle has bred in Alaska (AOU 1998). Fossil evidence of bald eagles dates back at least one million years and comes from several sites, including three from Florida (Buehler 2000). Two subspecies are recognized by some ornithologists, the larger *H. l. alascanus* breeding north of 40E N latitude and the smaller *H. l. leucocephalus* to the south. However, the bald eagle may have no subspecies, with its size and mass differences merely representing a decrease along a north-to-south gradient (Curnutt 1996, Buehler 2000). The only other eagle that occurs regularly in North America is the golden eagle (*Aquila chrysaetos*), which in Florida is a rare non-breeding winter resident, primarily of the panhandle (Stevenson and Anderson 1994).

Life History and Habitat

Breeding Behavior

Bald eagles are highly social outside of the nesting season, but are extremely territorial when nesting. They are capable of breeding in their fourth year, while still in sub-adult plumage, but may not breed until their sixth or seventh year where breeding competition is intense (Buehler

2000). Bald eagles are thought to be monogamous, with pair bonds persisting for several years, but this is largely unproven. Eagles are single-brooded, although pairs may renest if the first clutch is lost.

The bald eagle nesting season in Florida is defined as 1 October–15 May.

Bald eagles in Florida begin nest building or nest maintenance activities in late September or early October. The nesting season is prolonged, with egg-laying beginning as early as October or as late as April (later nests are mostly renesting attempts; Millsap *et al.* 2004). For purposes of this management plan, the bald eagle nesting season is defined as the period 1 October–15 May. Nest sites tend to be built near habitat edges (McEwan and Hirth 1980) in a living tree that offers a view of the surrounding area and that can support the eagle's often sizeable nest. Substrates used in Florida vary according to local conditions, and include pines (*Pinus palustris* and *P. elliottii*), cypress (*Taxodium* spp.), mangroves (*Avicennia germinans* and *Rhizophora mangle*), great blue heron (*Ardea herodia*) nests, artificial structures such as communication towers, transmission towers, and raptor nesting platforms, and even—very rarely—on the ground (Broley 1947, Shea *et al.* 1979, Curnutt and Robertson 1994, Curnutt 1996, Millsap *et al.* 2004). However, bald eagles in Florida strongly prefer living native pines to all other substrates; 75% of all eagle nests surveyed during 2006 were built in living native pines (FWC unpublished data).

Bald eagles in Florida strongly prefer live, native pines to all other nesting substrates.

Nearly all bald eagle nests in Florida are built within 1.8 miles of water (Wood *et al.* 1989). Territory size varies depending on habitat and prey density but is thought to encompass 0.6–1.2 square miles (Buehler 2000). Bald eagle nests are spaced apart to ensure sufficient food resources for nestlings and to raise young with minimal disturbance from other eagles. Eagle pairs often build more than one nest, which allows them to move to an alternate nest while remaining in their territory. Throughout their range, eagles maintain an average of 1.5 nests per territory, ranging from one nest to five nests (Stalmaster 1987, Buehler 2000).

Most clutches of eggs in Florida are laid between December and early January. Mean clutch size throughout the bald eagle's range is 1.87 eggs, with most nests containing two eggs. Incubation lasts about 35 days. Average brood size in Florida is 1.56 nestlings per nest (FWC unpublished data). Nestlings in Florida fledge at around 11 weeks of age and remain with their parents near the nest for an additional 4–11 weeks (Wood 1992, Wood *et al.* 1998). Fledglings begin widespread local movements before initial dispersal, which occurs from April to July (Millsap *et al.* 2004). Based on a sample of 18,838 nests in Florida during 1973–2004, average annual breeding productivity was 70.6%, ranging from 52.2% in 1974 to 82.7% in 1996 (Nesbitt 2005). Average reproductive success during 1973–2004 was 1.16 fledglings for all nests and 1.54 fledglings per successful nest.

Movements

Most of Florida's breeding bald eagles, especially those nesting in the extreme southern peninsula, remain in the state year-round, but most sub-adults and non-breeding adults migrate out of Florida (Stevenson and Anderson 1994, Curnutt 1996, Mojica 2006). Eagles migrate

northward between April and August and return southward from late July through late December. Juveniles migrate northward later than older sub-adults (Broley 1947, Wood and Collopy 1995, Mojica 2006). Most juveniles disperse at about 128 days of age and spend their first summer as far north as Newfoundland, with peak numbers summering around Chesapeake Bay and the coastal plain of North Carolina (Broley 1947, Millsap *et al.* 2004, Mojica 2006). Florida's bald eagles use three migration flyways—the Atlantic coast, Appalachian Mountains, and the Mississippi River valley—with equal frequency, and they use stopover sites for resting or foraging (Mojica 2006). Eagles also exhibit nomadic wandering, mostly by sub-adults. Northern-breeding *alascanus* bald eagles winter in Florida at least occasionally (Stevenson and Anderson 1994).

Food

Bald eagles are opportunistic foragers, feeding or scavenging on a wide variety of prey. Primary prey of eagles in Florida includes various fish and waterfowl species. Prey from one study in north-central Florida was composed of 78% fish (mostly catfish, especially brown bullhead; *Ictalurus nebulosus*), 17% birds (mainly American coot; *Fulica americana*), 3% mammals, and 1% amphibians and reptiles combined (McEwan and Hirth 1980). Most prey is captured from the surface of the water, but bald eagles often harass ospreys (*Pandion haliaetus*) in flight to drop fish that they have captured. Bald eagles in Florida often scavenge carcasses along roadways or garbage at landfills (Millsap *et al.* 2004).

Longevity

The record lifespan for a bald eagle in the wild is 28 years. Eagles follow a pattern typical of raptors, with lower juvenile survival followed by increasing survival to adulthood (Buehler 2000, Millsap *et al.* 2004).

Habitat

Bald eagles use forested habitats for nesting and roosting, and expanses of shallow fresh or salt water for foraging.

Throughout their range, bald eagles use forested habitats for nesting and roosting, and expanses of shallow fresh or salt water for foraging. Nesting habitat generally consists of densely forested areas of mature trees that are isolated from human disturbance (Buehler 2000). Daytime roosts are generally in "super-canopy" trees adjacent to shorelines, and are typically located away from human disturbance (Buehler 2000). Communal roosts, which are rare in Florida, are located within three miles of water (Mojica 2006). The quality of foraging habitat is characterized by the diversity, abundance, and vulnerability of eagle prey, the structure of the aquatic habitat (*e.g.*, presence of shallow water), and the extent of human disturbance (Buehler 2000). Bald eagle nesting habitats are protected by law, but little or no emphasis has yet been placed on the preservation of roosting or foraging habitats (Mojica 2006). The greatest numbers of bald eagle nesting territories in Florida are found along the Gulf coast and around some of the larger inland lakes and river systems in the peninsula (Figure 1).

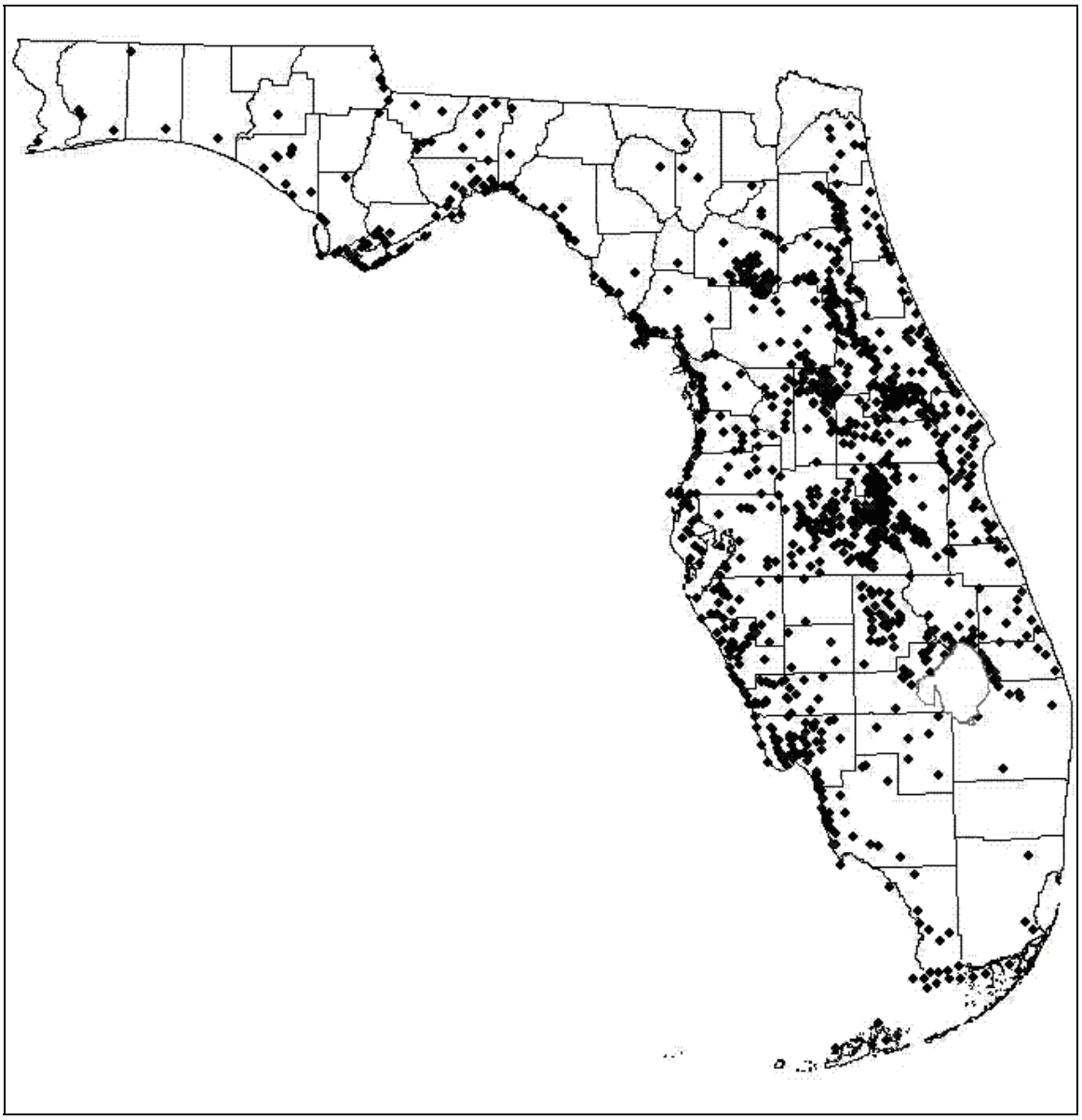

Figure 1. The distribution of active bald eagle nesting territories in Florida, 2005–2006.

Distribution and Population Status

Historical Distribution

Bald eagles formerly bred from central Alaska and the Maritime Provinces south to Baja California and Florida. It is widely believed that eagles were abundant in areas with high quality forested and aquatic habitats, both coastally and inland. In Florida, the eagle was called "abundant" (Bailey 1925) and "common" (Howell 1932) during the early 20th century. The size of Florida's historic bald eagle population is unknown but it "must have been well in excess of

1,000 nesting pairs," with numbers around Tampa Bay and Merritt Island thought to be "among the densest breeding concentrations of a large raptor known anywhere on earth" (Peterson and Robertson 1978).

Population Trends

The continental eagle population began to decline during the 18th century from loss of breeding habitat and from direct persecution—more than 128,000 bald eagles were shot in Alaska between 1917 and 1952 (Buehler 2000). The population decline intensified during the mid-20th century with widespread use of DDT compounding the continuing losses from habitat destruction and direct persecution. DDT is an organochlorine pesticide that was widely used in agriculture and mosquito control beginning in the 1940s. Widespread use of DDT was banned in the United States in 1972, partially because it disrupted calcium metabolism in raptors. This calcium reduction resulted in eggshells that ruptured during incubation, causing significant and widespread reproductive failure in bald eagles and other raptors (Stalmaster 1987, Buehler 2000). Broley (1950) documented "heavy nesting failures" of eagles in Florida, and Cruickshank (1980) wrote of their "alarming decrease" and near-extirpation as a breeding species in Brevard County after 1950.

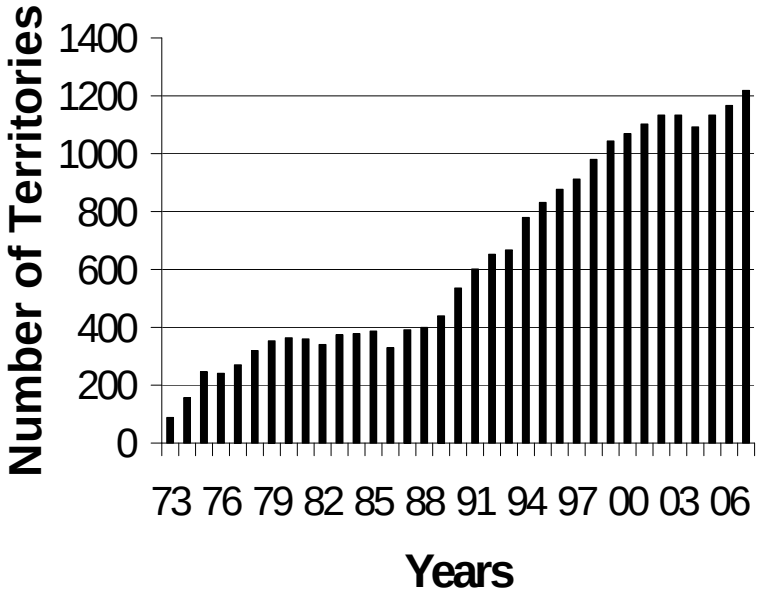

Figure 2. The number of bald eagle nesting territories in Florida, 1973–2007.

Substantial recovery of the bald eagle, continentally and in Florida, began in the 1970s, following the banning of DDT and a reduction in persecution brought on in part by passage of the U.S. Endangered Species Act of 1973. The Florida eagle population has increased greatly since statewide breeding season surveys began in 1972–1973, and especially since the early 1990s (Figure 2). The federal recovery plan for bald eagles in the southeastern states (USFWS 1989) established a "recommended recovery level" for Florida of 1,000 nesting territories, an average of 0.9 fledglings per active nest and ≥1.5 fledglings per successful nest, and ≥50% breeding productivity. Eagles in Florida have exceeded each of these parameters for the past 20 years (Nesbitt 2005). One reason for the recovery of the eagle in Florida has been the continued availability of appropriate nesting and foraging habitats, thought to be the result of adherence to management guidelines for construction activities near eagle nests (Nesbitt *et al.* in review).

By 1997, Florida's bald eagle population was thought to exceed 4000 individuals, including sub-adults and other non-breeders (Buehler 2000). The increase in the breeding population appears to have slowed recently, from 1,043 nesting territories in early 1999 to 1,218 territories in early 2007 (Nesbitt 2005, Figure 2). The actual number of territories present in Florida is not known; the USFWS will conduct a survey in Florida in 2009 to determine the proportion of nests that are undetected during annual surveys. The Biological Status Report for the Bald Eagle (Sullivan *et al.* 2006) reported that "recent studies indicate 24% of bald eagle nests go undetected" and that "based on this correction factor, it is estimated there were 1,405 active nests in Florida in 2005." However, the analysis on which this figure was based was flawed (M. Otto, pers. comm.). A new analysis is currently being conducted at Patuxent Wildlife Research Center to develop an accurate estimate of the number of nests.

The apparent slower growth of the number of bald eagle nesting territories in Florida since 1999 (Figure 2) may suggest that eagles are reaching their current carrying capacity in the state. If this is the case, then a slight population decline in the future might eventually be expected as the population adjusts to carrying capacity. However, because carrying capacity diminishes with habitat loss, it may be difficult to distinguish a decline caused by habitat loss from a decline due to an adjustment of carrying capacity.

Current Distribution

Bald eagles reclaimed their entire historic range by the late 1990s (Buehler 2000). Recovery in the Lower 48 states has been dramatic, increasing from an estimated 417 pairs in 1963 to an estimated 9,789 pairs by 2007 (USFWS 2007a). Bald eagles have met or exceeded the population goals established in all five regional recovery plans, and on 8 August 2007, the USFWS removed the species from the list of federally endangered and threatened species.

Bald eagles were known to breed in 59 of Florida's 67 counties by 2005, the exceptions being Baker, Broward, Calhoun, Gilchrist, Holmes, Lafayette, Madison, and Nassau (Nesbitt 2005; Figure 1). Most nests are found on privately-owned lands (67% in 2003; Nesbitt *et al.* in review; unpublished GIS data), underscoring the importance of private lands in the conservation of eagles in Florida. The growth of the state's eagle population during the 1990s, when the human population grew at a high rate, shows that bald eagle populations can flourish even when faced with development pressures, if appropriate habitat protections are in place.

Bald eagles were breeding in 59 of Florida's 67 counties by 2005.

Concentrations of nesting territories are clustered around several significant wetland systems. The FWC has identified 16 areas of concentrated bald eagle nesting activity that contain a majority of the known nesting territories in Florida (Figure 3, Table 1). Many of these "core nesting areas" have persisted for decades, suggesting the presence of high-quality breeding and foraging habitats (Nesbitt *et al.* in review). These core nesting areas are located along the Gulf coast from St. Vincent Island to Lee County, and inland from the lower St. Johns River to Lake Okeechobee (Figure 3). Changes in the size, configuration, and location of these core nesting areas are monitored, and their importance to the overall population of bald eagles in Florida will be determined as new data become available.

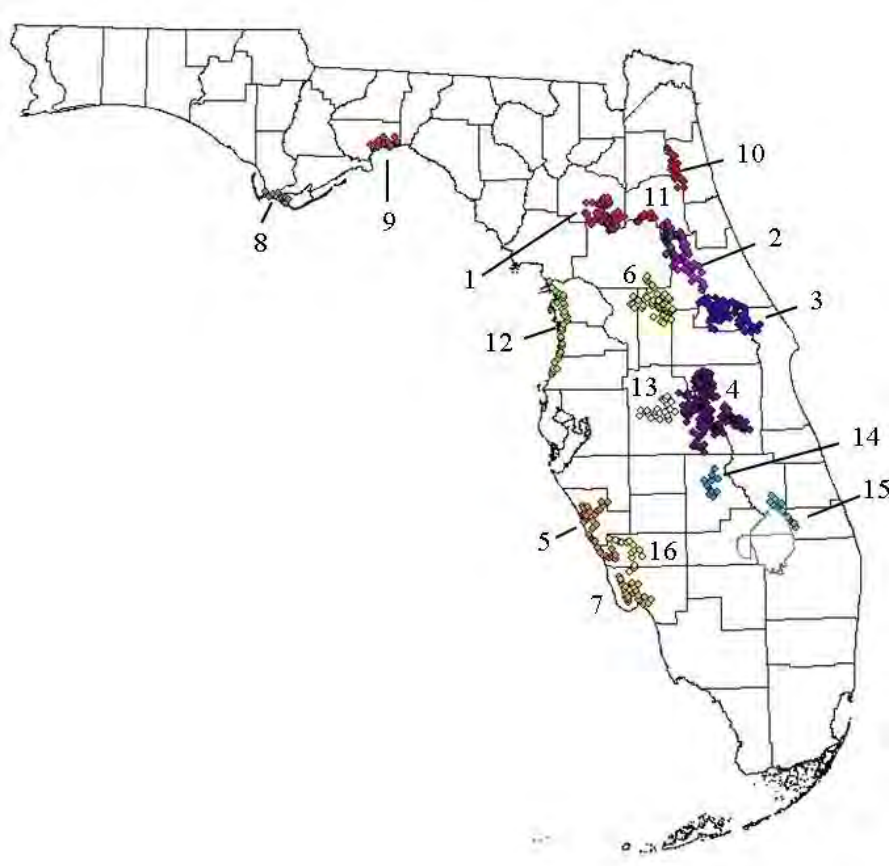

Figure 3. Location of bald eagle core nesting areas in Florida, 2005–2006. These core nesting areas, which are numbered chronologically from their discovery, are found in the following sites: (1) lakes Lochloosa, Newnans, and Orange; (2) Lake George; (3) the middle St. Johns River; (4) the Kissimmee chain of lakes; (5) the Placida Peninsula; (6) the Harris chain of lakes; (7) the Lee County coast; (8) St. Vincent National Wildlife Refuge; (9) St. Marks National Wildlife Refuge; (10) the lower St. Johns River; (11) Rodman Reservoir; (12) the central Gulf coast; (13) central Polk County; (14) Lake Istokpoga; (15) northeast Lake Okeechobee; and (16) coastal Charlotte County.

Table 1. The number of bald eagle nesting territories in the top 10 counties in Florida, 2004–2005. Data source is Nesbitt (2005).

County	Territories	County	Territories
Osceola	113	Seminole	45
Polk	112	Lee	42
Volusia	68	Brevard	41
Lake	63	Monroe	40
Putnam	56	Alachua	39

Historic and Ongoing Conservation Efforts

Substantial monitoring, management, and research activities have been conducted on Florida's bald eagles for more than 60 years, and many journal articles and reports have been produced. Since the 1972–1973 nesting season, all known nesting territories are monitored annually by use of aircraft to determine reproductive parameters such as territory occupancy, brood size, breeding productivity, and reproductive success. Eggs laid by eagles in Florida were used to successfully reestablish populations in other states during the 1970s and 1980s (Nesbitt and Collopy 1985). Wildlife rehabilitation centers in Florida have successfully treated and released hundreds of sick or injured bald eagles, while eagles with permanent injuries have provided opportunities for public education, lobbying, and fund-raising. Many of these conservation activities are anticipated to continue following delisting.

Several federal and state laws have directly or indirectly protected bald eagles. The most important laws include the federal Migratory Bird Treaty Act, the federal Bald and Golden Eagle Protection Act, and the federal Endangered Species Act, as well as state regulations noted in this document. The bald eagle was first protected nationally in 1918 under the Migratory Bird Treaty Act (16 U.S.C. 703–711), which protected nearly all native birds and their nests. The Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668a–668c) offered additional protection against take and disturbance of bald eagles and their nests. In 1972, the U.S. Environmental Protection Agency banned all domestic use of DDT, and this prohibition allowed bald eagle populations to recover from pesticide poisoning. The following year, the Endangered Species Act of 1973 (16 U.S.C. 1531–1544) was passed, and the bald eagle was added to the list of federally endangered and threatened species in 1978.

Bald eagle nesting habitats in Florida have been protected primarily through the Endangered Species Act in accordance with habitat management guidelines in the southeastern United States (USFWS 1987). These federal guidelines created buffers around eagle nests in which activities such as development or logging were restricted. Two buffer zones were recommended: a primary zone (0 to 750–1500 feet from the nest) and a secondary zone (1,500 feet to one mile beyond the end of the primary zone). Recently, the USFWS (2007b) published new federal guidelines that recommend a buffer zone that extends up to 660 feet from the nest depending upon whether a visual screen of vegetation exists around the nest, and the presence of existing activities in the vicinity of the nest, with additional recommendations for proposed activities occurring during the nesting season.

Florida also had state regulations that protected the bald eagle. The eagle was listed as threatened and therefore received protections afforded it by Rule 68A-27.004 of the Florida Administrative Code (F.A.C.), which prohibited the non-permitted take or harassment of eagles or their nests. There are local and state regulations tied to the listing category of a species. The Florida Land and Water Management Act of 1972 indirectly protected some eagle habitats by establishing two state programs: Development of Regional Impact and Area of Critical State Concern. The Area of Critical State Concern Program regulates development in areas of regional or statewide natural significance, such as Apalachicola Bay, the Green Swamp, Big Cypress Swamp, and the Florida Keys. The bald eagle is listed as a species of "greatest conservation need" in the Florida Comprehensive Wildlife Conservation Strategy (FWC 2005). This is not a legal designation but

rather makes conservation work on the bald eagle eligible to receive State Wildlife Grant funds to address the need for continued management and monitoring activities.

State water management districts and local governments provided additional layers of protection for bald eagles. Local regulations emphasize listed species (endangered, threatened, or species of special concern) and their habitats when considering comprehensive planning, zoning, development review, and permitting activities. Prioritization of listed species, requirements for surveys and documentation, increased buffer zones, protection of upland habitats, additional mitigation requirements, more intensive levels of review, and coordination and compliance with appropriate federal and state wildlife agencies are some of the procedures that local governments and state wildlife agencies apply to listed species.

During 2006, the USFWS proposed removing the bald eagle from the list of federally endangered and threatened species, and this action was finalized in August 2007. Although the bald eagle is no longer protected under the Endangered Species Act, it is still protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. The USFWS (2007b) has redefined some of the terminology included in the Bald and Golden Eagle Protection Act, which prohibits the unpermitted "take" of bald eagles, including their nests or eggs. The act defines "take" to mean to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" an eagle. The new definition of "disturb" is to "agitate or bother a bald or golden eagle to the degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior" (USFWS 2007b). This management plan adopts the federal definition of "disturb" in 50 C.F.R. § 22.3 and Florida's definition of "take" in Rule 68A-1.004, F.A.C.

CHAPTER 2: THREAT ASSESSMENT

Reasons for Delisting

In response to a petition filed in 2002, the FWC convened a panel to review the biological status of the bald eagle in Florida (Sullivan *et al.* 2006). The panel concluded that bald eagles in Florida did not meet the criteria for listing at any level and had not met the criteria for the previous five years. Consequently, the panel unanimously recommended that the bald eagle be removed from Florida's list of imperiled species. This decision was based on the following facts: (1) the bald eagle population occurs throughout Florida; (2) the population has not experienced extreme fluctuations in range or numbers; (3) the estimated number of adults had increased >300% during the past three eagle generations (defined here as a total of 24 years); and (4) the population is not projected to experience significant declines over the next 24 years (Sullivan *et al.* 2006).

Present and Anticipated Threats

Threats to the bald eagle in Florida include both natural and human-related causes that individually or in combination could cause reductions in reproductive or survival rates. This section highlights the most serious threats known to impact bald eagles in Florida currently, as well as a few threats that may potentially affect Florida's eagles in the future. This section emphasizes human-caused threats, which are more likely to be controlled via a management plan. Some sources of eagle mortality in Florida—natural as well as human-caused—have no clear remedy. Forrester and Spalding (2003) is an excellent reference for causes of injury and mortality to Florida's eagles. Other than intraspecific aggression, most natural mortalities probably go undetected. Human-related mortality is known from sick or injured eagles or eagle carcasses examined by the National Human Health Center, eagles brought to Audubon's Center for Birds of Prey, or other veterinary or rehabilitation centers (Forrester and Spalding 2003), as well as recent radio-telemetry studies of eagles in the wild (*e.g.*, Millsap *et al.* 2004, Mojica 2006).

The greatest cause of documented mortality to bald eagles in Florida during 1963–1994 was trauma, representing 59% of diagnosed mortalities (Forrester and Spalding 2003). Other causes of eagle mortality were electrocution (16%), poisoning (10%), infectious diseases (6%), emaciation (4%), and other (2%). Among 182 eagle deaths from trauma, vehicle collision accounted for 44%, gunshot 10%, intraspecific aggression 7%, powerline collision 4%, six other causes accounted for a total of 9%, and the causes of 26% of deaths were unknown (Forrester and Spalding 2003).

Human-caused Threats

Although the bald eagle population has grown concurrently with the growth of the human population in Florida, the continued conversion of nesting or foraging habitats to development can be expected to reduce the amount and quality of eagle habitats. Some of the most intense development pressure in peninsular Florida is occurring along the shores of large inland lakes that support core nesting areas (Figure 3), such as Lake Tohopekaliga in Osceola County.

Some eagles in Florida have shown great tolerance for nesting in suburban or urban areas—in some cases even establishing new territories in these habitats (Millsap *et al.* 2004). In one study, survival rates were similar for juveniles from rural and suburban nests, however mortality of those from suburban areas was almost always a result of direct or indirect human interactions while no mortality of rural birds were known to be associated with human interactions. Bald eagles raised in suburban habitats seem to become acclimated to human-related landscape features and do not regard these features with the same amount of caution that is shown by eagles raised from rural nests (Millsap *et al.* 2004). Nevertheless, more research is needed to determine effects of human activities in close proximity to eagle nests (Millsap *et al.* 2004).

Bald eagles often scavenge road-kills along roadways and are therefore susceptible to being struck by vehicles. Collision with motor vehicles represents the most frequent cause of documented eagle mortality in Florida, representing 19–44% of all eagles' deaths due to trauma, 1963–1994 and 1997–2001 (Forrester and Spalding 2003, Millsap *et al.* 2004).

Although protected from direct persecution for more than 50 years, bald eagles are occasionally still shot in Florida. Audubon's Birds of Prey Center received seven bald eagles with gunshot wounds during 2001–2006 (L. White, pers. comm.).

Powerlines cause eagle mortality in two ways, by electrocution and collision. Powerlines accounted for 19% of the mortality of bald eagles in Florida during 1963–1994, with electrocution representing more than 86% of this total (Forrester and Spalding 2003). Power companies in Florida have not yet retrofitted older distribution lines with modern features to reduce the incidence of eagle electrocutions.

The deaths of 19 bald eagles in Florida during 1973–1994 were attributed to lead poisoning, which usually affects eagles after they feed on waterfowl imbedded with lead shot. The use of lead shot for waterfowl hunting was banned in 1991. Pentobarbital poisoning of eagles occurs mostly at landfills, where eagles feed on the carcasses of euthanized animals, such as from a veterinary clinic or animal shelter. Forrester and Spalding (2003) discussed eight such eagle deaths in Florida, mostly at landfills. Bald eagles that breed in Florida forage heavily at landfills throughout the eastern United States, and are therefore exposed to this threat over a wide area (Millsap *et al.* 2004). Mercury contamination is another threat to eagles, although no known mortality has occurred (Forrester and Spalding 2003). However, the bioaccumulation of mercury in fish ingested by eagles suggests that sub-lethal effects will continue to be a potential threat.

Natural Threats

Bald eagles are extremely territorial when establishing or defending their nesting territories and may be badly injured or even killed during territorial battles. Intraspecific aggression accounts for 7% of documented eagle mortality in the state (Forrester and Spalding 2003). Along with food availability and inclement weather, intraspecific aggression is thought to be one of the primary regulators of eagle populations where human interactions are limited, especially in areas that are close to their carrying capacity (Buehler 2000). Mortality from intraspecific aggression may be expected to increase as Florida's eagle population approaches carrying capacity.

Hurricanes and other severe storms can damage or blow down eagle nests or nest trees, and storms that occur during the eagle nesting season can break eggs or kill nestlings. Forrester and Spalding (2003) detail several instances of storm-related mortality of bald eagles in Florida. Nesbitt (2005) determined that more than one-third of all eagle nesting territories monitored in Florida during 2004–2005 were within the paths of Hurricanes *Charley*, *Frances*, and *Jeanne*. Although there was significant local damage (*e.g.*, five of the six nests in DeSoto County were destroyed), overall effects of the storms were minimal. Fewer than 10% of the nests within the paths of the storms showed any lasting impacts, and most destroyed nests were rebuilt in the same or a nearby tree within weeks (Nesbitt 2005). Nevertheless, the loss of trees large enough to support eagle nests may cause local shortages of nesting sites in developed areas, where such trees may be scarce. Meteorologists are warning that we have recently entered a 25- to 50-year cycle of greater hurricane activity and intensity (Landsea *et al.* 1996), and, coupled with anticipated longer-term climate change associated with global warming (McCarthy *et al.* 2001), inclement weather may in the future have a greater impact on Florida's bald eagle population.

Forrester and Spalding (2003) list 112 diseases or parasites that have been found on or in the bodies of bald eagles in Florida. Most parasites are not lethal, but several infectious diseases have been implicated in the deaths of bald eagles. One suburban-raised eagle fledgling from Florida died from a chlamydial infection that was most likely transmitted by non-native monk parakeets (*Myiopsitta monachus*) that built their nest at the bottom of the eagle's nest (Millsap *et al.* 2004). Avian vacuolar myelinopathy (AVM) is a recently discovered neurological disease that attacked bald eagles and American coots in Arkansas during 1994. It has since been implicated in more than 100 bald eagle deaths in Georgia, North Carolina, and South Carolina (Wilde *et al.* 2005). AVM has yet to be detected in Florida, but it may eventually spread here, or Florida's eagles may contract the disease while summering out of state. West Nile virus colonized much of the continental United States within a few years of its discovery in 1999, and has been documented in 285 species of birds in North America, including bald eagles (Centers for Disease Control and Prevention 2006). However, the degree to which West Nile virus is a threat to Florida's eagles is unknown. Likewise, avian influenza is another potential threat to Florida's eagles.

CHAPTER 3: CONSERVATION GOAL AND OBJECTIVES

Conservation Goal

The goal of this management plan is to establish conservation actions that will maintain a stable or increasing population of bald eagles in Florida in perpetuity. To achieve this goal, a decline of 10% of the number of eagle nesting territories in Florida over a period of 24 years (three eagle generations) must be prevented through science-based management, regulations, public education, and law enforcement. The FWC anticipates that without continued protection of eagle nesting habitats, the number of nesting territories in Florida could decline by 10% or more over the next 24 years, which could trigger a relisting effort. The FWC has therefore set a conservation goal for bald eagles that is higher than the minimum threshold to avoid a need for relisting.

The data for the conservation objectives are from the annual nest surveys conducted by FWC biologists for the past 35 years.

Conservation Objectives

Conservation objectives are benchmarks used to measure progress toward the conservation goal. The following conservation objectives have been met or exceeded in Florida, and maintaining these objectives will help to ensure that the conservation goal is sustained. Annual nest surveys conducted by FWC biologists since 1972 provide the data used to establish the following objectives. Determining annual reproductive success will provide the information needed to monitor the population and to measure the success of the objectives. The FWC listing process has five criteria—three based on population size or trend, one on geographic range, and one on quantitative analysis of the probability of extinction (see Sullivan *et al.* 2006). The first three conservation objectives below provide a means by which changes in population size or trend can be detected, while the fourth objective is intended to ensure that the bald eagle maintains its current geographic distribution. Maintaining a stable or increasing population of eagles throughout their current distribution will ensure a healthy bald eagle population in Florida, and will prevent the need to relist eagles under FWC's imperiled-species regulations. The following conservation objectives will be calculated annually from five-year running averages, beginning with data collected during the period 2002–2006. We use five-year averages to avoid the possibility that one or two years of poor reproductive success might trigger a relisting effort. These numbers are subject to revision based on changes in monitoring data and/or methods.

The conservation objectives will be calculated annually from five-year running averages of bald eagle population data.

1. **Maintain a minimum of 1020 active territories per year over the next 24 years (*i.e.*, through 2032).**

   The listing criterion that seems most likely to trigger a future listing petition for the bald eagle in Florida is Criterion C: Small Population with Compounding Problems. To trigger this criterion, a species must be below the threshold of 10,000 mature individuals **and** must meet one of two possible sub-criteria, more likely sub-criterion C1 (a 10% decline over three generations). The Biological Status Report for the Bald Eagle (Sullivan *et al.* 2006)

defined 8–12 years as the length of one bald eagle generation. The FWC believes that it is acceptable to use eight years as the generation length, as this number is compatible with USFWS's Draft Post-delisting Monitoring Plan (2007c). The Biological Status Report estimated that the population in Florida numbered 3,372 mature individuals during 2005. That same year, there were 1,133 active bald eagle nesting territories in the state (Nesbitt 2005), so Florida must maintain a breeding population of ≥1020 nesting territories (*i.e.*, 90% of 1,133) to avoid triggering sub-criterion C1 of the listing process.

2. Maintain an average of 68% of the active territories producing ≥1 nestling per year.

Because bald eagles require 4–5 years to reach sexual maturity, it is important to monitor breeding productivity to determine potential future impacts to the population. A decrease in reproduction may provide an early warning for a pending population decline. The value of 68% represents the current five-year average of bald eagle nesting territories in Florida producing ≥1 nestling per year. As it appears that the eagle population has slowed its increase since 2000, it is appropriate to use the most recent five-year average available (2002-2006) of breeding productivity as the benchmark, since this level has resulted in an apparently stable population.

3. Maintain an average reproductive success of ≥1.5 fledglings per active nest over five years.

Since FWC surveys began in 1972, reproductive success of bald eagles in Florida has averaged 1.54 fledglings per active nest. Five-year running averages were calculated for all survey years, and fledgling production never dropped below 1.5 fledglings per nest, so this number was chosen to ensure a stable population.

4. Maintain the current area of occupancy (>770 mi^2) and extent of occurrence (52,979 mi^2) of bald eagles statewide.

Maintaining the current area of occupancy and extent of occurrence of bald eagles statewide will help maintain a stable or increasing population. Further, the Biological Status Report (Sullivan *et al.* 2006) indicated that bald eagles in Florida may be near the threshold for listing as a species of special concern, based on which figure is used for the Area of Occupancy. While this criterion can be triggered only in combination with two sub-criteria, the FWC believes that the prudent benchmark is to maintain an area of occupancy in excess of the threshold, as calculated in the Biological Status Report (Sullivan *et al.* 2006).

CHAPTER 4: RECOMMENDED CONSERVATION ACTIONS

Strategies to Achieve the Conservation Objectives

This chapter describes the strategies to be undertaken to maintain Florida's bald eagle population at or above the levels specified by the conservation objectives. Virtually all of the conservation actions address each of the objectives. These actions are best accomplished by using an adaptive management approach that allows for adjustments to policies, guidelines, and techniques based on science and observed responses to implemented conservation measures. New biological information will be used to adjust bald eagle conservation actions as it becomes available. The FWC will monitor the eagle population and will study the effects of human activities near eagle nests. Results of this research will be evaluated and the FWC will propose adjustments in regulations, minimization, and conservation measures as appropriate. Any substantive changes to FWC policies or guidelines will be made with stakeholder involvement and Commission approval.

Habitat Management

This management plan relies in part on the ability of public lands to support bald eagles. Currently, approximately 33% of all known bald eagle nests in Florida occur on public lands (Sullivan *et al.* 2006, Nesbitt *et al.* in review). Public lands provide a high level of security for wildlife because of statutory provisions for long-term management funding and for guiding habitat management on those lands (Florida Statutes 259.105 and 259.032).

The FWC encourages land management practices that decrease the risk of catastrophic wildfire or an outbreak of timber disease, and that retain old-growth native pines.

The FWC encourages land management practices that benefit bald eagles by decreasing the risk of catastrophic wildfire, by maintaining healthy forests, and by providing suitable nest trees. These management practices include the use of prescribed fire, removal of exotic species, reduction of excess fuel loads, thinning of overstocked stands, replanting with native species (primarily pines), and uneven-aged timber management. Retaining large-diameter native pines will ensure that suitable potential nest trees may be available in the future. All of these land-management activities should use the appropriate protections outlined in the Permitting Framework. The FWC recommends siting high-impact recreational activities away from any active or alternate bald eagle nest and restricting activity and/or posting signs during the nesting season, where appropriate. The FWC will provide to managers of Florida's public lands the resources to identify bald eagle nests on lands they manage. The FWC will also provide technical assistance in managing habitats within nest buffers, and will ensure that future Conceptual Management Plans of lands managed by FWC include a component that follows recommended management practices of habitats surrounding bald eagle nests.

Nesting Habitat

The USFWS (2007b) Bald Eagle Management Guidelines help the public comply with the Bald and Golden Eagle Protection Act by avoiding activities that disturb bald eagles. These federal guidelines serve as the basis for the FWC Habitat Management Guidelines recommended in this management plan to ensure compliance with Florida wildlife laws concerning bald eagles (see Permitting Framework), and to minimize potentially harmful activities conducted within 660 feet of active or alternate bald eagle nests. In addition, the FWC recommends that nesting habitat be managed as described in the preceding section on habitat management.

Foraging Habitat

Aquatic habitats that support fish and waterfowl are essential to maintaining healthy prey populations for bald eagles. The FWC monitors and manages freshwater habitats and fish populations in more than one million acres of lakes, rivers, and streams, and provides funding to restore and enhance these habitats. Several federal and state agencies in Florida work together to maintain quality aquatic habitats. The U.S. Environmental Protection Agency, Florida Department of Environmental Protection (DEP) and the five water management districts monitor and regulate water quality (nutrient input) and quantity (minimum flows and levels) to maintain healthy conditions for aquatic plants, fish, and other wildlife. The FWC and DEP also work together to monitor, restore, and control aquatic plants through permit reviews, chemical, mechanical, or biological control of invasive exotic species, and through enhancement projects to improve habitats for fish and other wildlife. These combined habitat management efforts are expected to provide suitable eagle foraging habitats in Florida in perpetuity.

Bald eagles frequently feed at landfills, and some eagles have been killed by secondary pentobarbital poisoning from feeding on carcasses of euthanized animals. For this reason, it is imperative to incinerate or quickly bury the bodies of euthanized animals.

Land Acquisition

Continued acquisition of private lands is one of several strategies for preserving bald eagle habitats in Florida. Approximately 28% of Florida's land area is publicly owned or protected under perpetual conservation easements, and these lands support about 33% of the bald eagle nests in the state. Conservation easements can be used to set aside private lands from future development and are an important component of the conservation of bald eagles. The FWC, local governments, other state agencies, and private organizations acquire habitat through a variety of programs. The FWC will support legislation as part of the Florida Forever successor program to allocate sufficient funds necessary to acquire and manage suitable or potentially suitable habitat for imperiled species and bald eagles. Acquiring, managing, and restoring additional lands that support bald eagle habitats should remain a state priority so long as the acquisitions are compatible with priorities for imperiled species.

Private Lands Incentives

Private lands play an important role in the long-term conservation of bald eagles in Florida, currently supporting about 67% of all currently known nests. To promote the enhancement of bald eagles and eagle habitats on private lands in Florida, the FWC will:

1. **Inform private landowners of existing land-use incentive programs.** Incentive programs that can be used to promote conservation of bald eagles are listed in Table 2 (following page). FWC staff will work with owners of private lands who wish to manage their lands for the benefit of bald eagles to determine the most appropriate incentive programs.

2. **Inform private landowners of opportunities to sell conservation easements around bald eagle nests on their properties.** A developer whose activity is not conducted consistent with the FWC Eagle Management Guidelines (page 23) may elect to purchase a conservation easement around an eagle nest offsite or other suitable bald eagle habitat as a conservation measure. This action will provide another landowner the opportunity to be compensated for permanently conserving a bald eagle nest or nesting habitat.

3. **Work with local governments to encourage expedited permit-review and/or reduced development-review fees in exchange for voluntarily following the FWC Eagle Management Guidelines.** The FWC recommends that developers who voluntarily avoid potential disturbance of bald eagles by following the FWC Eagle Management Guidelines be granted financial incentives or expedited project review. This recommendation will require the cooperation of local governments.

Table 2. Landowner assistance programs that may be used to promote the conservation of bald eagles in Florida.

Program	Description	Contact
Common Species Common (CSC)	Administered by FWC. Improves wildlife habitat by focusing conservation on high-priority habitats outlined in FWC's Comprehensive Wildlife Conservation Strategy.	FWC Habitat Conservation Scientific Services (HCSS) biologist*
Conservation Reserve Program (CRP)	Administered by U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA). Provides annual payments and cost-share assistance to establish long-term, resource-conserving landcover on eligible farmland.	Local FSA office through the nearest USDA center
Environmental Quality Incentives Program (EQIP)	Administered by USDA's Natural Resources Conservation Service (NRCS). Provides technical assistance and up to 50% of the cost to farmers and ranchers who face threats to soil, water, air, or natural resources.	USDA district conservationist
Forest Stewardship Program (FSP)	Administered by FWC. Helps landowners to increase the economic value of their forestland while maintaining its environ-mental integrity. Stewardship is based on the multiple-use land strategy.	Local forester or a HCSS biologist
Partners for Fish and Wildlife Program (PFW)	Administered by USFWS. Provides technical assistance and up to 50% of the cost-sharing to landowners who conduct habitat restoration or improvement activities on their lands. The focus in Florida is on restoration of native habitats, restoration of degraded streams or other wetlands, and eradication of exotic species.	HCSS biologist
Wetlands Reserve Program (WRP)	Administered by NRCS. Provides technical and financial assistance to restore wetlands and purchase conservation easements.	USDA district conservationist
Wildlife Habitat Incentives Program (WHIP)	Administered by NRCS. Provides technical assistance and up to 75% of the cost-sharing to establish or improve wildlife habitat.	USDA district conservationist

* Regional HCSS biologists can be contacted through FWC's regional offices; <http://myfwc.com/Contact/regnoffc.htm>.

Law Enforcement

The FWC's Division of Law Enforcement, in conjunction with federal, state, and local partners, is responsible for enforcing Florida's wildlife and fisheries laws. From 2003 through 2006, FWC officers responded to more than 400 incidents involving bald eagles, and this effort will not diminish upon delisting. Efforts to protect bald eagles include the following actions: patrolling areas where eagles and eagle nests occur; responding to calls of illegal activity in progress; investigating reports of illegal activity; documenting and referring illegal acts for prosecution; picking up sick or injured eagles for transport to rehabilitation facilities; retrieving and storing carcasses of non-evidentiary eagles; and providing proactive, public guidance about bald eagle conservation.

Potential wildlife violations should be reported to FWC's Wildlife Alert toll-free number (1-888-404-3922), which is answered 24 hours a day.

One of the most important components of the enforcement strategy is ensuring compliance through education. The FWC's law enforcement officers understand the importance of explaining wildlife laws to the public to avoid unintentional violations. However, FWC law enforcement officers actively pursue and refer for prosecution those who intentionally violate wildlife laws. The FWC law enforcement officers also educate the public on how to identify and report violations. The FWC's Division of Law Enforcement administers the Wildlife Alert program, which receives information via a toll-free number (1-888-404-3922) that is answered 24 hours a day, seven days a week. Cash rewards are offered to callers who provide information about any illegal activity that results in an arrest. Callers may remain anonymous and are not required to testify in court.

The FWC law enforcement officers and USFWS special agents partner to protect Florida's wildlife and fisheries resources via a Cooperative Law Enforcement Agreement. This Agreement grants FWC officers the authority to enforce federal laws, including the Bald and Golden Eagle Protection Act. Additionally, FAC 68A-13.002 adopts the federal Migratory Bird Treaty Act as state law and applies state penalties for violations. The FWC officers provide most of the routine patrol of eagle habitats and nests. Agents from USFWS and FWC often jointly investigate wildlife violations to decide whether to prosecute in state or federal court.

Proposed Regulations

Even though the FWC proposes to remove the bald eagle from the state's list of imperiled species under Rule 68A-27.004 (F.A.C.), management of bald eagles remains important to maintain the recovered status of the species. The FWC will gradually modify protections and conservation measures, if population trends warrant such actions, while monitoring the impacts of these actions.

Management guidelines established for bald eagles by the U.S. Fish and Wildlife Service (1987) consisted primarily of recommending that buffer zones be established around active and alternate eagle nests, and then providing biological opinions and technical assistance under provisions of Section 7 of the Endangered Species Act regarding land-use activities within these zones. These

buffer zones were effective in assuring that development activities did not significantly affect nesting eagles in Florida. When reproductive success was compared between rural eagle nests and nests subject to regulated development (recommendations were followed within 750 feet of the nest), no differences were detected, regardless of whether the development was residential or commercial (Nesbitt *et al.* 1993). This study demonstrates that when management guidelines were followed, bald eagle nesting was not significantly affected, and therefore the 750-foot buffer zone around eagle nests was considered effective and sufficient for minimizing the effects of development. Two other reviews of eagle nests in Florida have suggested that occupation rates of nests by eagles did not change following construction activities (T. Logan, S. Godley, pers. comm.). Nevertheless, observations by others have suggested that eagles have been substantially affected by construction activities (L. White, pers. comm.).

The National Bald Eagle Management Guidelines (USFWS 2007b) recommend the establishment of a single buffer zone 660 feet or less from the nest, depending on the presence or absence of existing activities (of "similar scope") and the visibility of the activity from the nest. The guidelines also recommend minimization measures to reduce the potential for human activities to affect nesting bald eagles. When the bald eagle was listed by the USFWS as threatened, the recommended buffers around bald eagle nests were larger than those now adopted under the National Bald Eagle Management Guidelines (USFWS 2007b). The Southeastern Bald Eagle Habitat Management Guidelines (USFWS 1987) recommended against most activities within 750 feet of an active or alternate bald eagle nest (the primary zone), and added a suite of seasonal recommendations for activities up to 1,500 feet (the secondary zone).

The USFWS and FWC have approved the installation of infrastructure and external residential/commercial construction within the secondary zone (750–1,500 feet) of bald eagle nests during the nesting season in Florida since the mid-1990s, with the provision that monitoring be conducted to evaluate the response of the eagles to authorized activities. These joint monitoring guidelines were formalized in 2002 to ensure that nest monitoring was conducted consistently, and to serve as a database for evaluating the ongoing and future changes in management recommendations. Results of this monitoring indicate that actions that occurred in the secondary zone were not likely to have a direct negative impact on bald eagles. The Bald Eagle Monitoring Guidelines subsequently were modified on three occasions to obtain data used to evaluate eagles' response to the revised buffer-zone distances already implemented in Florida and incorporated into the National Bald Eagle Management Guidelines (USFWS 2007b) and to reflect current USFWS policy and regulatory changes in Florida. Initial review of the information in these more recent monitoring reports suggests the current USFWS guidelines are appropriate.

Some bald eagle pairs in Florida tolerate disturbance much closer than 660 feet from the nest, and the behavior of eagles nesting close to or within developed areas seems to be increasing in Florida. Bald eagle use of urban areas is a relatively new event, and the long-term stability of urban eagle territories has not been documented fully. Although some eagles have demonstrated tolerance for intensive human activity, this does not mean that all eagles will do so (Millsap *et al.* 2004). A minimum of five years of post-impact data is needed to study the long-term effects of development within regulated nest buffer zones (Nesbitt *et al.* 1993). Both studies described above (Nesbitt *et al.* 1993, Millsap *et al.* 2004) recommended retaining buffer zones around bald

eagle nests. Therefore, the conservation of active or alternate bald eagle nests and the retention of recommended buffer zones (USFWS 2007b) are recommended to sustain the bald eagle population in Florida at or above its current level.

To better organize existing rules and to provide a location for eagle-specific rules, the FWC proposes to establish a new section within F.A.C. Chapter 68A for nongame birds (Rules Relating to Birds. F.A.C. 68A-16). Currently there are specific sections of Chapter 68A that regulate the "take" of game species, freshwater fish, fur-bearing animals, reptiles, amphibians, and many saltwater species. F.A.C. 68A-16 will create one location for existing rules pertaining to all non-listed, nongame birds. The FWC proposes moving F.A.C. 68A-13.002, "Migratory Birds; Adoption of Federal Statutes and Regulations," to this new section (Rules Relating to Birds. F.A.C. 68A-16.001). A review of current FWC rules will likely identify other rules that should be moved to this new section. Other than the eagle specific rule proposed below, the FWC is not proposing any new rules, only the reorganization of existing rules.

One rule change is necessary to implement the removal of the bald eagle from the list of threatened species (68A-27.004 F.A.C.). This management plan recommends that 68A-27.004 F.A.C. be amended by removing the bald eagle from the list simultaneously with the addition of the bald eagle rule language proposed below.

Following is draft language for a proposed Florida regulation to protect bald eagles:

F.A.C. 68A-16.002 Bald Eagle (*Haliaeetus leucocephalus*).

(1) No person shall take, feed, disturb, possess, sell, purchase or barter, or attempt to engage in any such conduct, any bald eagle or parts thereof, or their nests or eggs, except:

(a) As authorized from the executive director by specific permit, which will be issued based upon whether the permit would advance the management plan goal and objectives;

(b) When such conduct is consistent with the FWC Eagle Management Guidelines;

(c) When such conduct is consistent with a previously issued permit, exemption, or authorization issued by the FWC under imperiled species regulations (Chapter 68A-27, F.A.C.) or by the USFWS under the Endangered Species Act (U.S.C. 1531 et seq.)

(2) For purposes of this section, the term "disturb" is defined as, "To agitate or bother a bald eagle to the degree that causes, or is likely to cause (a) injury to an eagle, (b) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (c) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

(3) On public land, it is unlawful for any person to knowingly enter any area posted as closed for the protection of bald eagles, their nests, or their nest trees, except the staff or authorized agents of the managing public entity for that area, or as authorized pursuant to subsection 1.

(4) The section of the Bald Eagle Management Plan entitled "Permitting Framework April 2008," which includes the FWC Eagle Management Guidelines, is incorporated herein by reference.

Permitting Framework April 2008

The Permitting Framework applies to all activities within 660 feet of any active or alternate bald eagle nest.

To advance the conservation goal and objectives of this management plan, the proposed regulations listed above and this Permitting Framework are intended to assist land-use planning to minimize the potential for certain actions to disturb or "take" nesting bald eagles. This Permitting Framework clarifies (1) those activities that are not likely to result in a "take" or disturbance of bald eagles, and (2) those activities for which permits are available to assure compliance with the rules. A FWC Eagle Permit is not required to conduct any particular activity occurring near a bald eagle nest, but such a permit may be necessary to avoid liability for "take" or disturbance caused by the activity. Because the rule standard for any permit issued is "would advance the management plan goal and objectives", this section establishes criteria that meet the standard. This Permitting Framework and the FWC Eagle Management Guidelines, contained herein should be used together. Individuals who cannot follow the Guidelines and want to avoid liability for a possible disturbance or take can apply for a permit. A FWC Eagle Permit can only be issued when acceptable minimization and conservation measures are provided as permit conditions.

The FWC intends for this management plan to be compatible with the USFWS Bald and Golden Eagle Protection Act (BGEPA) and the associated National Bald Eagle Management Guidelines (USFWS 2007b). The FWC will work with the USFWS to implement a single permit framework for bald eagles. The FWC is already coordinating with the USFWS on an agreement that will clarify under what circumstances federal authorization will be required to conduct activities that cannot be conducted consistent with the Bald and Golden Eagle Protection Act. Development of such an agreement will take time in part because the USFWS has not yet developed a draft permitting framework under BGEPA. Additionally, as new information becomes available on the effectiveness of the proposed conservation measures, this permitting framework may be revised. Changes to this Permitting Framework section will require stakeholder involvement and Commission approval. Any change in policy, including any revisions to this Permitting Framework, will be posted to the FWC website <http://www.myfwc.com>, after consultation with stakeholders and the public and upon approval by the Commission.

Unless otherwise specified, this section provides guidelines for activities that occur within 660 feet of any active or alternate bald eagle nest. The framework does not apply to lost or abandoned nests. An **active** nest shows evidence of breeding by a bald eagle pair during the current or most recent nesting season. An **alternate** nest has been used for nesting during the past five nesting seasons, but was not used during the current or most recent nesting season. An **abandoned** nest has not been used for nesting for more than five consecutive nesting seasons. The recommendations in the FWC Eagle Management Guidelines (below) no longer apply to abandoned nests, but the nest itself cannot be altered. A nest is considered **lost** if the nest tree is destroyed, or if the nest is destroyed by natural causes and is not rebuilt in the same tree within two nesting seasons. The USFWS (2006b) recommends protecting lost nests for three years, but the FWC uses a two-breeding-season period because this duration has been in place in Florida for several years. Future research on nest reactivation may provide information to justify revising these recommended protection periods.

The bald eagle nesting season is 1 October–15 May unless the young fledge before or after 15 May. The following sections identify activities that should not occur within 660 feet of a bald eagle nest during the nesting season unless monitoring is conducted. Nest monitoring must follow the protocol outlined in the Bald Eagle Monitoring Guidelines (USFWS 2007d), or subsequent versions.

A. FWC Eagle Management Guidelines (Activities That Do Not Require a FWC Eagle Permit)

Activities that can be undertaken consistent with the FWC Eagle Management Guidelines do not require a FWC Eagle Permit. A process map (Figure 4) clarifies when application for a permit is recommended. Activities that do not require a permit include (1) those conducted at any time more than 660 feet from an eagle nest, (2) any temporary activity (defined below) conducted at any distance from a nest outside the nesting season, or (3) any activity conducted consistent with the FWC Eagle Management Guidelines.

Activities that do not require a FWC eagle permit include (1) those conducted more than 660 feet from a bald eagle nest, (2) any temporary activity conducted outside the nesting season, or (3) any activity that follows the FWC Eagle Management Guidelines.

The FWC recommends that the FWC Eagle Management Guidelines be followed unless a permit is issued. The FWC will not issue citations to or seek prosecution of persons whose activities are conducted consistent with the FWC Eagle Management Guidelines, even if the activity results in a "take" or disturbance of bald eagles. If it is unclear whether a proposed activity can be undertaken consistent with the FWC Eagle Management Guidelines, then the local FWC regional nongame biologist should be contacted <http://myfwc.com/Contact/regnoffc.htm> for guidance.

The FWC will not seek to prosecute persons whose activities are conducted consistent with the FWC Eagle Management Guidelines, even if the activity results in a "take" or disturbance to bald eagles.

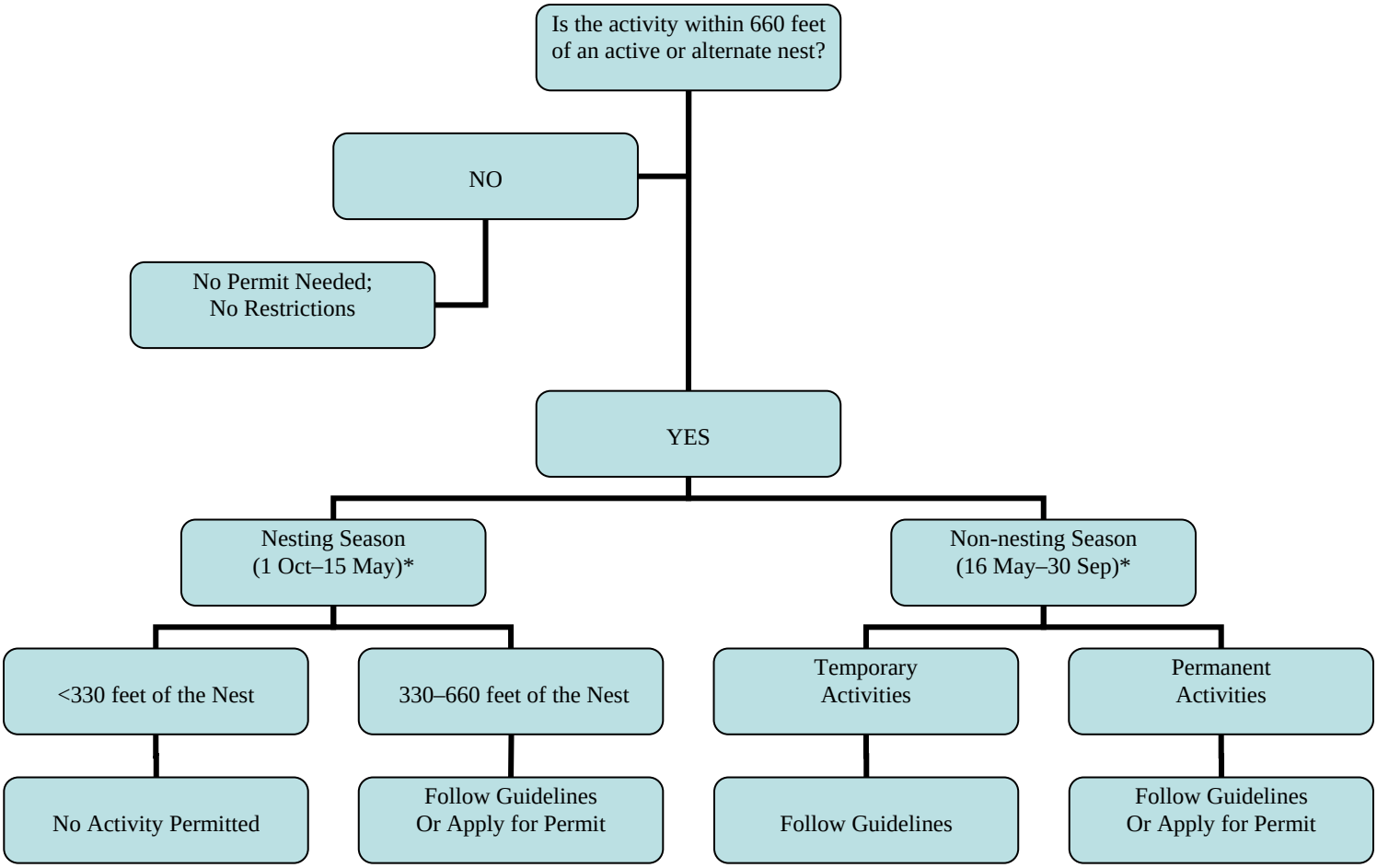

Figure 4. Process map for determining whether or not a FWC Eagle Permit would be recommended for a proposed activity near a bald eagle nest. For ongoing activities that are conducted at the historic rate, or for activities that may fall under similar scope to existing actvities, refer to the FWC Eagle Management Guidelines for more detail.

* Unless nestlings fledge before or after these dates.

Existing Uses Within 660 Feet of an Eagle Nest.—Eagles are not likely to be disturbed by routine use of roads, homes and other infrastructure, routine agricultural operations, or pre-existing vegetation management of linear utilities occurring within 660 feet of an active or alternate bald eagle nest. Therefore, in most cases, existing activities of the same degree ("similar scope") may continue with little risk of disturbing nesting bald eagles and a FWC Eagle permit is not needed. However, some *intermittent, occasional, or irregular* activities may disturb eagles. For example, activities associated with auctions, field dog trials, or other sporting events may disturb a pair of bald eagles even though the events have been held at the same location for several years. In such situations, the activity should be adjusted or relocated to minimize potential disturbance to the eagles.

Existing activities can continue at the same intensity with little risk of disturbing eagles.

Any artificial structure that contains a bald eagle nest may be maintained, repaired, or upgraded when conducted consistent with the guidelines if: (1) the work will not remove or substantially alter the nest to the extent that further use for nesting is affected; **and** (2) the work is conducted outside the nesting season or when nest monitoring in accordance with the Bald Eagle Monitoring Guidelines (2007d) documents that the nest is not being used by eagles when the work occurs.

New Activities Proposed Within 660 Feet of an Eagle Nest.—The FWC Eagle Management Guidelines provided here describe measures to avoid disturbing bald eagles caused by new activities. To determine if an activity can be conducted consistent with these Guidelines, the FWC proposes to design a system to provide voluntary, self-service technical assistance through a web-based format. This format will provide data that will assist the FWC in evaluating the effectiveness of current rules and Guidelines. If proposed activities cannot be conducted consistent with the FWC Eagle Management Guidelines, then the local FWC regional nongame biologist should be contacted for guidance.

If special circumstances that might increase or diminish the likelihood of disturbing nesting bald eagles apply to a project, or if these FWC Eagle Management Guidelines cannot be followed, then the local FWC regional nongame biologist should be contacted for guidance.

The buffer zones around eagle nests that are provided in this section are based on those recommended in the National Bald Eagle Management Guidelines (USFWS 2007b). A distance of 1,500 feet is used to evaluate the degree to which a nesting pair of bald eagles has been exposed to human-related activities (Table 3). The National Bald Eagle Management Guidelines (USFWS 2007b) use a distance of one mile from the nest to evaluate this distance, but the FWC uses 1,500 feet because this distance has been used in Florida for several years. Recommendations for nests that are distant from human activities are subject to larger buffer zones (660 feet) because eagles in these nests are more likely to be disturbed by activities near the nest.

Activities that may disturb nesting bald eagles are divided into nine categories (A–I) based on their nature and magnitude:

Category A

- Building construction of one or two stories, and with a project footprint of ≤0.5 acre;
- Construction of roads, trails, canals, powerlines, or other linear utilities;
- New or expanded agriculture or aquaculture operations;
- Alteration of shorelines, aquatic habitat, or other wetlands;
- Installation of docks or moorings;
- Water impoundment.

Category B

- Building construction of one or two stories, and with a project footprint of >0.5 acre;
- Building construction of three or more stories;
- Installation or expansion of marinas with a capacity of six or more boats;
- Mining;
- Oil or natural gas drilling or refining.

Table 3. The minimum allowed distances from an active or alternate bald eagle nest that a Category A or Category B activity can occur without the need for a FWC bald eagle permit. Activities proposed to occur closer to an eagle nest than the distances designated here should apply for a FWC Eagle Permit.

	No Similar activity within 1,500 feet of the nest	***Similar activity closer than 1,500 feet from the nest***
There is no visual buffer between the nest and the activity	Categories A and B: 660 feet.	Categories A and B: 660 feet, or as close as existing activities of similar scope.
There is a visual buffer between the nest and the activity	Category A: 330 feet. Site work and exterior construction between 330-660 feet should be conducted outside the nesting season unless the Bald Eagle Monitoring Guidelines (USFWS 2007d) are followed. Category B: 660 feet.	Categories A and B: 330 feet, or as close as existing activity of similar scope. Site work and exterior construction between 330-660 feet should be performed outside the nesting season.

For projects in categories A or B, exterior construction activities and site work within 330 feet of an active or alternate bald eagle nest should be conducted during the non-nesting season (16 May–30 September). Site work and exterior construction activities between 330 and 660 feet from the nest may be conducted during the nesting season when the Bald Eagle Monitoring Guidelines (USFWS 2007d) are followed. The use of dump trucks within 660 feet of an eagle nest should occur during the nesting season only when the Bald Eagle Monitoring Guidelines (USFWS 2007d) are followed. Minimize noise and human activity associated with interior construction during the nesting season.

Construction activities may occur during the nesting season if nest monitoring, following the Bald Eagle Monitoring Guidelines (USFWS 2007d), confirms that eagles have not returned to the nest by 1 October, or that nestlings have fledged before 15 May. In either situation, the regional FWC nongame biologist should be notified.

Managers of any project that follows these guidelines and use nest monitoring to allow construction within 660 feet during the nesting season must provide monitoring reports to the FWC. In addition to ensuring that the eagles are not disturbed while nesting, this will also provide data to analyze the appropriateness of the protective measures.

Category C: Land Management Practices, including Forestry

Certain land management practices benefit bald eagles and their habitats. Land management practices that retain old-growth native pines and that decrease the risk of catastrophic wildfire or an outbreak of timber disease are recommended. However, some management practices could "take" or disturb nesting bald eagles. A FWC Eagle Permit is not needed for land management practices occurring near an active or alternate bald eagle nest when undertaken consistent with the following guidelines.

The FWC encourages land management practices that decrease the risk of catastrophic wildfire or an outbreak of timber disease, and that retain old-growth native pines.

- Avoid clear-cutting within 330 feet of the nest at any time. This restriction may be lifted outside the nesting season for emergency provisions, such as to control disease outbreak or an insect infestation, especially when the health of the nest tree may be at risk. The regional FWC nongame biologist should be notified prior to initiating any emergency activities within 330 feet of the nest.

- Avoid construction of log transfer facilities and in-water log storage areas within 330 feet of the nest. Use of any existing road may continue at the historic rate, but avoid routing logging traffic within 330 feet of an active nest during the nesting season.

- Avoid timber harvesting, replanting, or other silvicultural operations, including road construction and chain saw and yarding operations, within 660 feet of the nest tree during the nesting season. If the Nest Monitoring Guidelines (USFWS 2007d) are applied, then activities between 330 and 660 feet may be allowed during the nesting season. If nest monitoring confirms that the nest is inactive, then the seasonal restrictions would not

apply. Selectively thin to retain at least 50% of the total canopy and the largest native pines within 660 feet of the nest. Take precautions to protect the nest tree.

- Prescribed burning within 330 feet of the nest or the installation or maintenance of firelines within 660 feet of the nest should be undertaken outside the nesting season. Precautions such as hand-raking of leaf litter and hand removal of excess fuel loads near the nest tree should be taken to decrease the threat of crown fire or fire climbing the nest tree, but these actions should not occur when eagles are present. If it is determined that a burn during the eagle nesting season would be beneficial, then these activities must be conducted when eagles are absent (*e.g.*, before eggs are laid or after the young have fledged). When appropriate to reduce fuel loads, land managers should consider mechanical treatment of the area within 330 feet outside the nesting season to allow for a safer growing-season burn. Smoke screening should be implemented to avoid impacting an active nest.

- Contact the regional FWC biologist if the use of heavy equipment within 50 feet of the nest tree is planned for an activity.

Category D: Agriculture and Linear Utilities (Existing Operations)

No buffer is necessary outside the nesting season. During the nesting season, routine agriculture or linear utility vegetation management are not anticipated to result in disturbance as long as those activities are conducted consistent with these guidelines (also see "Existing Uses Within 660 of an Eagle Nest"). For new or expanded agricultural operations, see Category A.

Category E: Off-road Vehicles

No buffer is necessary outside the nesting season. During the nesting season, off-road vehicles should not be operated within 330 feet of the nest or within 660 feet where visibility and exposure to noise are increased.

Category F: Motorized Watercraft

No buffer is necessary outside the nesting season. During the nesting season, loud vessels and concentrations of vessels (*e.g.*, commercial fishing boats or tour boats) should not be operated within 660 feet of the nest. Other motorized boat traffic within 330 feet of the nest should be minimized, and stopping should be avoided.

Category G: Non-motorized Recreation such as Hiking, Camping, Birding, Fishing, Hunting, or Canoeing

No buffer is necessary outside the nesting season. Activities visible or highly audible from the nest should not occur within 330 feet of the nest during the nesting season.

The bald eagle nesting season in Florida is 1 October–15 May, unless the young fledge before or after 15 May.

Category H: Aircraft (Including Helicopters)

No buffer is necessary outside the nesting season. During the nesting season, aircraft should not be intentionally operated within 1,000 vertical or horizontal feet of an eagle nest, except for authorized biologists trained in survey techniques and aircraft at airports or operating in prescribed landing and departure patterns. This guidance also does not apply to through-flights operating within FAA rules that unintentionally encounter eagle nests, but rather to intentional harassment of nests and eagles such as repeated passes of a nest for sight-seeing.

Category I: Blasting or Other Loud, Intermittent Noises

No buffer is necessary outside the nesting season for blasting activities that do not alter the landscape. During the nesting season, no blasting should occur within 660 feet of an active nest. Loud noises (including Class B fireworks) or blasting activities that alter the landscape within 660 of the nest should not occur during the nesting season, except where eagles have demonstrated tolerance for such activity.

B. Activities That Do Not Require a FWC Eagle Permit if Federally Authorized

In 2007, the USFWS proposed a draft permitting process under the Bald and Golden Eagle Protection Act. Because the FWC seeks to avoid duplication of effort, then the following actions permitted by USFWS will not need a FWC bald eagle permit provided that the federal permit is available for inspection while the permitted activity is being conducted. If federal rules defer to states or require proof of state authorization, then the actions listed below may need to be reevaluated.

1. *Modifications within the buffer zone of a lost nest.*—The FWC Eagle Management Guidelines prescribe protection buffers for lost nests for two consecutive nesting seasons. If federal authorization in the form of a "take" permit is obtained for an activity within the recommended buffer of a naturally-destroyed bald eagle nest prior to the nest being declared lost (*i.e.*, prior to two nesting seasons post-destruction), then no state permit will be required. Once a nest meets the definition of lost (see Glossary, p. ix: has been missing for more than two consecutive nesting seasons), then the buffer zone no longer applies, and therefore no eagle permit is necessary.

2. *Destruction of a bald eagle nest.*— Notwithstanding anything to the contrary herein, no state permit is needed if a federal "take" permit is obtained to destroy an abandoned nest.

3. *Previously permitted projects.*—The FWC will not refer the "take" of a bald eagle or parts thereof, or its nests or eggs, for prosecution if such "take" is in compliance with the terms and conditions of any USFWS bald eagle Technical Assistance Letter or any Biological Opinion or Incidental Take Permit issued under Sections 7 or 10 of the Endangered Species Act of 1973, as amended. Such letters, opinions, and permits shall serve as state authorization provided that the authorizations are issued prior to the effective date of the proposed state bald eagle rule, and that the FWC is provided with a copy of the federal authorization upon request.

4. *Salvage*.—Federal authorization to handle bald eagle carcasses, parts, or eggs for salvage purposes functions as state authorization, provided that the authorized individual carries a copy of the federal authorization.

5. *Possession for religious or cultural purposes.*—Federal authorization for the possession of bald eagles or their parts for religious or cultural purposes functions as state authorization, provided that the authorized individual carries a copy of the federal authorization.

6. *Possession of eagle parts for educational purposes.*—Federal authorization for the possession of bald eagle parts, nests, or eggs for educational purposes functions as state authorization, provided that the authorized individual carries a copy of the federal authorization, and all requirements of the federal authorization are being fulfilled.

7. *Airports.*—If federally authorized, eagles that pose an imminent jeopardy to aircraft safety and human life may be harassed by persistent, non-injurious disturbance without physical capture or direct handling by airport operators or their agents on airport property in order to prevent collisions.

C. Activities That Require a FWC Eagle Permit

Except for the federally-authorized actions listed above, any action that cannot be undertaken consistent with the FWC Eagle Management Guidelines may require a FWC Eagle Permit to avoid a violation of rule. As such, any action that results in the taking, feeding, disturbing, possessing, selling, purchasing, or bartering of eagles or eagle parts requires a permit. As defined in 68A-1.004, F.A.C., “take” includes pursuing, hunting, molesting, capturing, or killing. Under the appropriate conditions (described in this section) the FWC will issue several types of permits for bald eagles including disturbance, scientific collection, and nest removal. Other, more general permits may be issued for certain activities listed below.

Eagle Depredation at Agriculture or Aquaculture Facilities.—Non-injurious disturbance of bald eagles that are depredating agriculture or aquaculture resources requires a FWC Eagle Permit. These permits will be issued solely in accordance with appropriate federal law. Permit provisions should include required husbandry techniques that reduce or prevent future problems when applicable or reasonable. No conservation measures are required, as these permits authorize only non-injurious harassment. Permits should be issued solely for persistent depredations rather than occasional events. If federal rules adequately protect bald eagles at agriculture or aquaculture facilities, then the need for a state permit will be reevaluated.

Activities That Involve Possession

The following activities involve possession and therefore require a FWC permit. Existing rules and permitting programs for possession will not change. Applicants should be aware that federal permits for these actions are required unless federal rules or a FWC/USFWS agreement defers

the need for a federal permit when the action is authorized by the state. No conservation measures are necessary for educational display, rehabilitation, or scientific collection because these activities provide a conservation benefit to eagles.

1. *Educational Display*.—Any facility that wishes to possess live bald eagles for educational purposes must abide by caging requirements (Rule 68A-6, F.A.C.) and obtain a license for exhibition/public sale (372.921 Florida Statutes). Federal authorization for the possession of bald eagle parts, nests, or eggs for educational purposes functions as state authorization, provided that the authorized individual carries a copy of the federal authorization, and that all requirements of the federal authorization are met.

2. *Rehabilitation*.—Wildlife rehabilitators who possess a FWC Wildlife Rehabilitation permit (Rules 68A-6 and 68A-9, F.A.C.) for migratory birds also require federal authorization to possess bald eagles for rehabilitation purposes. No eagle nestling or fledgling that is attended by adult eagles should be handled for rehabilitation without first consulting the FWC regional nongame biologist, except when an emergency exists and inaction may endanger the nestling or fledgling.

3. *Scientific Collection*.—Research that might result in disturbance to bald eagles requires a Scientific Collection permit (Rule 68A-9.002, F.A.C.). Scientific Collection permits will be issued solely for projects with a sound scientific design and those that demonstrate scientific or educational benefits to the bald eagle. Federal authorization may also be required.

4. *Falconry*.—Rules pertaining to the use of birds of prey in Florida for falconry purposes are found in 68A-9, F.A.C. While the bald eagle currently may not be used in falconry, its status in falconry may change upon delisting. If the joint federal-state falconry rules provide for the possession of bald eagles for falconry purposes, then a falconry permit will be required. Conservation measures, if any, will be determined at a later date.

Activities That Require Emergency Authorization

Declared emergency.—Emergency activities associated with recovery from a federal- or state-declared disaster will require an after-the-fact FWC Eagle Permit if the activities cannot be undertaken consistent with the FWC Eagle Management Guidelines. Such activities may include operation of equipment associated with rescue, road or utility repair, or clearing of debris in transportation or utility corridors. The FWC regional non-game biologist should be contacted within 30 days to discuss possible minimization measures, and conservation measures will be assessed on a case-by-case basis on the extent of the emergency and the impacts to eagles.

Activities That Require Nest Removal

Except for the federally-authorized activities listed above, a FWC nest removal permit is required for authorization to remove or destroy any bald eagle nest, even when eagles are not present. Nest removal may be necessary because the nest presents a threat to human safety or a threat to the safety of bald eagles or their eggs or nestlings. Minimization and conservation

measures for these permits will be based on the extent of the emergency and the impacts to eagles.

A FWC Eagle Permit is required to remove or destroy any bald eagle nest, even an abandoned nest.

An abandoned nest as defined in this management plan is still considered a nest by FWC for the purposes of state rule and it also remains protected under the Bald and Golden Eagle Protection Act. If the federal permitting process adequately provides for the conservation of Florida's bald eagles, then the need for a state nest-removal permit could be waived.

Airports.—Bald eagle nests on or adjacent to airports could increase the risk of an aircraft/avian strike, and are therefore considered hazardous to human safety and to nesting bald eagles and their young. Federal law requires airports to develop and implement a Wildlife Hazard Management Plan (WHMP) to manage and control wildlife that presents a risk to public safety from aircraft collisions. These plans include techniques to avoid attracting eagles, and non-injurious harassment to prevent eagles from frequenting the property. Both a FWC nest removal permit and federal authorization are required for the removal of eagle nests on or adjacent to airports.

Nest removal from artificial structures.—When maintenance of an artificial structure requires the removal of an active or alternate bald eagle nest that is *not* an immediate threat to human safety, then the nest may be removed only outside the nesting season and only after a FWC nest-removal permit has been issued. Federal authorization may also be required. Minimization and conservation measures will be assessed on a project-by-project basis.

D. Activities That May Require a FWC Eagle Permit

No FWC Eagle Permit is required for any activity that is conducted consistent with the FWC Eagle Management Guidelines.

A permit is not required to conduct any particular activity, but is necessary to avoid liability for take or disturbance caused by the activity. Therefore, any land-altering activity within 660 feet of an active or alternate bald eagle nest that cannot be undertaken consistent with the FWC Eagle Management Guidelines may require a FWC eagle permit. Activities beyond 660 feet do not ever require a FWC Eagle Permit. The FWC will issue an eagle permit where the applicant provides minimization and/or conservation measures that will advance the goal and objectives of this management plan.

Minimization Measures

The following minimization measures are intended to reduce the potential for disturbing eagles and may be required as part of a FWC Eagle Permit.

Construction-related Activities Within 660 Feet of an Eagle Nest

For projects that receive a FWC Eagle Permit, the following minimization efforts may be required:

1. Implement the Bald Eagle Monitoring Guidelines (USFWS 2007d) for all site work or exterior construction activities. Avoid exterior construction activities within 330 feet of the nest during the nesting season.
2. Avoid construction activity (except those related to emergencies) within 100 feet of an eagle nest during any time of the year except for nests built on artificial structures, or when similar scope may allow construction activities to occur closer than 100 feet.
3. Avoid the use or placement of heavy equipment within 50 feet of the nest tree at any time to avoid potential impacts to the tree roots. This minimization does not apply to existing roads, trails, or other linear facilities near an eagle nest, or to nests built on artificial structures.
4. Schedule construction activities so that construction farther from the nest occurs before construction closer to the nest.
5. Shield new exterior lighting so that lights do not shine directly onto the nest.
6. Create, enhance, or expand the visual vegetative buffer between construction activities and the nest by planting appropriate native pines or hardwoods.
7. Site stormwater ponds no closer than 100 feet from the eagle nest, and construct them outside the nesting season. Consider planting native pines or hardwoods around the pond to create, enhance, or expand the visual buffer.
8. Incorporate industry-approved avian-safe features for all new utility construction <www.fws.gov/migratorybirds/issues/APP/AVIAN%20PROTECTION%20PLAN%20FINAL%204%2019%2005.pdf>.
9. Retain the largest native pines for use as potential roost or nest sites.

Land-Management Activities Within 660 Feet of an Eagle Nest

Most land management activities can be planned to comply with the FWC Eagle Management Guidelines and will not require a permit. For land management activities that receive a FWC Eagle Permit, the following minimization efforts are recommended:

1. Avoid the use or placement of heavy equipment within 50 feet of the nest tree to avoid potential impacts to tree roots. This minimization does not apply to existing roads, trails, or other linear facilities near an eagle nest or to nests built on artificial structures.
2. Plan the activity to avoid the nesting season to the greatest extent possible. Avoid disruptive activities when eagles are incubating eggs or when nestlings are close to fledging.
3. Schedule activities so that activities farther from the nest occur before activities closer to the nest.
4. Maintain the greatest possible vegetative buffer between land management activities and the nest.
5. Retain the largest native pines for use as potential roost or nest trees.

Conservation Measures

The conservation measures listed below will advance the management plan goal and objectives by (1) continuing to provide suitable eagle nesting habitats throughout Florida, and (2) funding monitoring, research, and management activities. When an activity cannot be undertaken consistent with the FWC Eagle Management Guidelines (*e.g.*, when disturbance or take may occur), then a FWC Eagle Permit is recommended to avoid a possible violation of the FWC eagle rule.

Conservation measures apply to any active or alternate bald eagle nest.

When construction activities are planned inside the recommended buffer zone of an active or alternate bald eagle nest, then issuance of a FWC Eagle Permit will require conservation measures. The following conservation measures are considered to advance the goal of the management plan; alternatives submitted under option 5 will be reviewed by FWC staff to determine if they will advance the goal of the management plan. The number of conservation measures will depend upon the distance that the activity will occur from a bald eagle nest. For activities between 330 and 660 feet, one conservation measure is sufficient. For activities within 330 feet of a nest, two conservation measures should be included with the application and one of the two measures should be a $35,000 contribution to the Bald Eagle Conservation Fund (#1, below). When activities would likely cause disturbance during only one nesting season, conservation measures need not be provided if they would only affect an alternate nest, but conservation measures should be provided if they will affect an active nest.

1. Contribute $35,000 to the Bald Eagle Conservation Fund to support bald eagle monitoring and research.
2. Provide a financial assurance (such as a bond) in the amount of $50,000.
3. Grant a conservation easement over the 330-foot buffer zone of an active or alternate bald eagle nest within the same or an adjacent county, or within the same core nesting area (Figure 3). When the buffer is only partially owned by the applicant, contribute an onsite easement over the portion of the 330-foot buffer zone to which the applicant holds title.
4. Grant a conservation easement over suitable bald eagle nesting habitat (see #5, below) onsite or offsite.
5. Propose an alternate conservation measure that advances the goal of the management plan based upon the particular facts and circumstances presented by the applicant.

Conservation measures are based on the following guidelines:

1. Conservation easements and financial assurances can be terminated, released, or returned to the landowner if the nest for which an activity is permitted is successful (produces at least one fledgling) for at least one of the three years after the permitted activity is completed; the burden of proof is upon the applicant. If a nest is lost to natural causes (i.e. strong winds, fire), the easement or bond may be released on the third year if eagles have not built a new nest within the buffer. Financial assurances that

are not returned to the landowner will be turned over to the Bald Eagle Conservation Fund.

2. Fee structure is based on the likelihood of disturbance to eagles; activities closer to a nest provide more conservation measures than activities farther away. As such, activities permitted within 330 feet of an active or alternate bald eagle nest should contribute $35,000 to the Bald Eagle Conservation Fund as one of two conservation measures **and** provide an additional conservation measure.
3. The amount of fees paid outright is lower than fees paid as a bond because costs for FWC administration (including site visits) are less.
4. The fee amount is for calendar year 2008; the fee will be adjusted in subsequent years as specified below in the Monetary Contribution section (next page).
5. Suitable habitat for bald eagles will be evaluated based upon the following characteristics: within 1.86 miles of a permanent water body ≥0.2 square miles in size; contain a canopy of mature native pines or cypresses with several perch trees and an unimpaired line of sight (habitat in southern Florida may include mangrove or other native species); few land-use features (low density housing, industrial, etc.) and linear and point features (roads, powerlines, railroads, etc.) within 0.5 mile; ideally should be located in a previously identified bald eagle core nesting area.
6. Conservation easements must include at least the 330-foot buffer around an active or alternate eagle nest. Where the buffer is only partially owned by the applicant, an onsite easement may be placed over that portion of the property to which the applicant holds title. Easements may be placed only around nests that are in suitable habitat as described above.
7. Conservation easements must include provision of funds for management practices for the life of the easement. Management practices should include all activities listed under "Category C: Land Management Practices, including Forestry" and must be conducted by the landowner or other entity. The FWC will hold all easements and will ensure compliance with minimization and conservation measures.
8. Bald eagles often build multiple nests that are used alternately. Projects that either avoid potential take by avoiding impacts within the buffer zone or that receive a permit to conduct activities within the buffer zone may later be affected if an eagle pair initiates construction of a new nest within the project boundary. The FWC believes that projects that follow proper procedures for bald eagles should not have to provide additional conservation measures for any new eagle nest built on the site after the planning and permitting procedures have been completed. Therefore, other than the fact that the nest itself cannot be destroyed, such projects will not be expected to provide further conservation measures if bald eagles choose to move their nest location within the project site.

Monetary Contribution

The Conservation Measures portion of this management plan references a contribution to the Bald Eagle Conservation Fund. The fund was created by a Memorandum of Understanding between the USFWS, the FWC, and the Wildlife Foundation of Florida. The fund collects monetary contributions from the issuance of FWC Eagle Permits to applicants whose projects impact the buffer zones of active or alternate bald eagle nests. Funds may be spent on surveys,

monitoring, other research needs, or any other activity that promotes the conservation goal of bald eagles. The contribution amount will be adjusted over time to ensure that conservation funding keeps pace with inflation. Tying the change to the Consumer Price Index will ensure the contribution is adjusted relative to actual price increases or decreases. The FWC will use the "All Urban Consumers Consumer Price Index" (CPI-U), which is a reflection of the highest percentage of the population, and the CPI-U for the Southeast region. Information on the Consumer Price Index is available at <www.bls.gov/cpi>.

In the first year following the effective date of the FWC bald eagle rule, the monetary contribution will be as specified above. In each subsequent year, this amount will change by an amount equal to the annual CPI-U for the Southeast region, and will be based on changes during the CPU calendar year (1 January–31 December). Adjustments to the contribution amount should take effect on 1 March of each year because the CPI for the previous year is usually not available until mid-February. The contribution will be calculated based on the date that a completed application is received by FWC.

For example, if the FWC bald eagle rule takes effect during April 2008, and if the appropriate contribution to the Bald Eagle Conservation Fund through February 2009 is $35,000, then on 1 March 2009, the amount would change at the same rate as the CPI-U for the Southeast Region for the 2009 calendar year. If the CPI-U for the Southeast Region increased by 3%, then the appropriate contribution would be $36,050 (3% of 35,000 = 1,050; 35,000 + 1,050 = 36,050).

The amount of the monetary contribution is due prior to conducting the permitted activities. Contributions may be applied toward annual monitoring surveys, research, purchase of eagle habitat, or other conservation activities. To offset local impacts of projects, preference will be given to land purchases within the same county or core nesting area.

Local Government Coordination

The FWC has the constitutional authority and duty in Florida to manage wildlife in the state. The role of local government and other agencies in the regulation and management of wildlife must be well-defined. Local governments are statutorily required to include a conservation element in their comprehensive plans for the conservation, use, and protection of natural resources, including fisheries and wildlife, pursuant to Chapter 163, F.S. Coordination between the FWC and local governments in implementing components of this plan is essential for the successful conservation and management of bald eagles in Florida.

Local governments and regional or state agencies (e.g. water management districts) often are the first to conduct site inspections of properties where land-clearing or building permits are sought. These on-site inspections typically occur early in the permit process and provide the opportunity to confirm the presence or absence of bald eagles, and to inform landowners and developers about required FWC permits and authorizations. This action by local governments or other agencies provides a mechanism to assure that necessary FWC permits can be issued earlier in the permit approval process, prior to issuance of local government land-clearing or building permits.

Local governments and other agencies also play a substantial role in bald eagle conservation and management by providing protected and managed areas for eagles. Many local governments have created habitat-acquisition and management programs, which can provide important assistance in achieving the goal and objectives of this management plan. The FWC will coordinate with local governments and other agencies to help ensure that local land-acquisition programs and their implementing ordinances and policies are: (1) consistent with the goal and objectives of this management plan; and (2) focus on acquisition priorities for bald eagles and other important wildlife species.

Coordination between the FWC and local governments is crucial in efforts to increase funding for land acquisition and management. The FWC will encourage local governments and other agencies to support the FWC's efforts to assure adequate funding within the successor to the Florida Forever program.

Effective cooperation between the FWC and local governments can streamline the permit review process, improve regulatory compliance, and improve management of locally owned or managed lands that support bald eagles and other species of conservation concern. The FWC will assist and encourage local governments to perform the following activities:

- Remain current with FWC regulations related to the management of the bald eagles.
- Provide information to landowners, builders, and the general public about this management plan and regulatory prohibitions and permit options. These efforts will help promote compliance with FWC regulations and understanding of FWC incentives available to landowners.
- Include on permit applications for land-clearing or building activities a questionnaire to determine whether surveys have been conducted for bald eagles.
- Inspect parcels that are undergoing development review for the presence or absence of bald eagles, and when eagles are present (as confirmed through site visits by trained county staff, or environmental consultant reports/data) notify FWC staff to assure compliance with FWC eagle rules and guidelines.
- Consider requiring the issuance of a FWC Eagle Permit early in a project's permit-approval process before issuing local land-clearing or development permits.
- Notify the FWC of wildlife complaints or potential FWC rule violations through the Wildlife Alert number (1-888-404-3922). Coordinate with FWC law enforcement in providing supporting information for law enforcement investigations.
- Use Memoranda of Understanding with FWC to implement any of the above actions.

The FWC will:

- Create outreach materials for local governments, landowners, and the general public to foster better understanding of and compliance with this management plan and with other FWC regulations.
- Provide to managers of Florida's public lands the locations of all active and alternate bald eagle nests to allow for proper management of surrounding habitats.

- Cooperate with the Prescribed Fire Strike Team program set up as part of implementation of the Gopher Tortoise Management Plan and other fire strike teams to assist with management of bald eagle habitats on public lands.
- Lead efforts to attain additional funding through the successor to the Florida Forever program to allow local and state governments to acquire and manage additional conservation lands for bald eagles.
- Identify and prioritize through the FWC management-needs database potentially suitable sites on publicly owned or controlled lands that are in need of habitat restoration.
- Assist in establishing incentives in land development codes to better manage and restore publicly owned or controlled land to provide habitat for bald eagles and other wildlife.
- Schedule workshops with local governments and other agencies to provide information on this plan and FWC regulations applicable to bald eagles and information on the role of local governments and other agencies in providing compliance assistance with FWC rules.

Monitoring Plan

Population Monitoring

FWC staff and others have monitored bald eagle nests in Florida since 1972. The information gathered during the past 35 years includes the locations of thousands of eagle nests and nesting territories, breeding productivity, core nesting areas, reproductive success, and population trends. Current information pertaining to the status and trends of the eagle population in Florida, as well as the current status of all known active eagle nests, is available online at <www.myfwc.com/imperiledspecies/eagle>. An online database for reporting new or previously undiscovered eagle nests in the state is anticipated to be available during spring 2008. Continued monitoring of bald eagle nests in Florida will provide the scientific data necessary to evaluate whether the objectives of this management plan are being achieved, and to determine whether future modification of this management plan and its guidelines may be warranted.

A survey of all known bald eagle nests in Florida is conducted annually between November and March of each nesting season. Surveys are flown by FWC biologists or contractors, and, for Everglades National Park, by National Park Service staff. New or previously undiscovered nests are searched for opportunistically during the regular survey flights. Replication of the survey methodology ensures that effort is comparable among years. All nesting and productivity data for bald eagles in Florida are compiled and analyzed to generate annual population estimates that are used to determine population trends.

Additional surveys were conducted during the 2006–2007 nesting season to determine the efficiency of the current protocol for finding previously undiscovered bald eagle nests and to locate new nests in potential bald eagle habitat.

FWC researchers have identified 16 core areas of bald eagle nesting activity (Figure 3). Changes in size, configuration, and location of these areas will be monitored, and their importance to the overall bald eagle population in Florida will be determined as new data become available.

The Draft Post-Delisting Monitoring Plan (USFWS 2007c) recommends that bald eagle nests be monitored every five years for three eagle generations (24 years). Monitoring eagle nests and nesting territories in Florida at a five-year interval would not provide adequate information to verify that the conservation objectives of this plan were being maintained. Additionally, annual surveys provide to contractors, consultants, land owners, and other interested parties the status of all known active and alternate eagle nests in the state, and provide a basis for declaring nests to be lost or abandoned. To ensure that the conservation objectives of this management plan are being maintained, the FWC recommends that annual surveying continues for the next 24 years (*i.e.,* until 2032). In addition to existing information about the status of eagle nests, biologists characterize the habitat and land-use changes within each nesting territory in Florida. This information may help to identify the factors that affect population changes, movements patterns, habitat changes, and other trends.

The continuation of FWC surveys of all known eagle nests and nesting territories is dependent on securing funding. If funding is limited, then the FWC may choose to survey only a sample of the eagle nests and nesting territories statewide annually, and to develop methods to estimate the overall population. This sub-sampling approach, if developed, will reduce funding costs while continuing to monitor the status of bald eagle nests and nesting territories statewide on an annual basis.

The FWC may partner with other agencies, colleges or universities, or non-governmental organizations in Florida (*e.g.,* Audubon's Eagle Watch program) to assist in the monitoring of bald eagle nests and nesting territories. Such partnering would be another way to possibly reduce monitoring costs while assuring that the appropriate data are collected. Every five years, the FWC will ensure that the data collected in Florida are comparable with data from other states to contribute to the national breeding population estimate.

Project-Specific Nest Monitoring

The Bald Eagle Monitoring Guidelines (USFWS 2007d) recommend monitoring an eagle nest if construction activities occur within 660 feet of the nest during the nesting season (1 October–15 May). These federal guidelines standardize the method for gathering data to evaluate eagle responses to activities that may cause disturbance. The guidelines are designed to: (1) describe normal nesting behavior of bald eagles; (2) identify specific behavioral responses of adult and young eagles that may warrant cessation of development activities; (3) propose the type and level of monitoring necessary to detect a change in normal eagle behavior; (4) prescribe a procedure for reporting to the USFWS and the FWC the observations that may be used to halt or modify construction activities; and (5) provide data to the FWC to evaluate the effectiveness of the current FWC Eagle Management Guidelines. The FWC has adopted the Bald Eagle Monitoring Guidelines (USFWS 2007d). To ensure compliance with these guidelines, the FWC may conduct random spot-checks of projects that are following the guidelines, as resources allow. The information obtained from these monitoring efforts may provide additional insight into the tolerance of bald eagles to human activities near their nests.

Mortality Monitoring

The FWC will evaluate the sources and extent of bald eagle mortality in Florida. These data, coupled with population monitoring, will aid in determining the cause or causes of any decline in the eagle population. An increased mortality rate or a rapid change in the causes of mortality may trigger a management action to address the problem. The FWC's Division of Law Enforcement and the USFWS have worked cooperatively to develop protocols for salvaging and storing eagle carcasses that are sent to the National Eagle Repository in Denver, Colorado. The USFWS has purchased freezers for FWC to store these carcasses until shipments to Colorado can be made. The FWC and USFWS have developed a mortality database that includes the cause of each eagle death.

Education and Outreach

An active conservation education and outreach program will help ensure that the public understands the status of the bald eagle's recovery, knows what protections and management strategies maintain the population, and, most importantly, what citizens can do to aid the eagle's recovery.

Key messages for education and outreach efforts include:

- The bald eagle is an Endangered Species Act success story that is no longer threatened with extinction;
- Delisting does not mean that the bald eagle is no longer protected—state and federal regulations will continue to protect bald eagles, their nests, and their nesting territories; and
- The bald eagle's recovery is a result of prescribed management efforts that will continue, so that a population decline does not occur and trigger a need for future relisting of the species.

This education and outreach plan includes an emphasis on the following audiences:

- Local government planning and permitting staff
- Other federal or state governmental agencies
- Development professionals and private land owners
- Environmental consulting firms
- Conservation-oriented public and groups
- Media representatives
- Local, state, and federal law-enforcement personnel
- Managers of public lands
- Land-acquisition organizations
- Agricultural, silvicultural, ranching, and aquacultural interests
- Power companies
- Communication tower managers
- Landfill managers
- Veterinary associations
- Airport managers and Federal Aviation Authority representatives

Although some of these efforts may be concentrated within bald eagle core nesting areas, efforts will be statewide when possible to maximize benefits to eagle conservation in Florida. All education and outreach efforts such as handbooks, brochures, and PowerPoint presentations will be available for downloading from the FWC's bald eagle website <www.myfwc.com/imperiledspecies/eagle>. Bald eagle interest groups, stakeholders, and the media will be notified when these materials are available online. FWC staff will give presentations about bald eagle conservation in Florida to various interest groups.

All Audiences:

- Create and distribute a brochure that contains key messages about bald eagle recovery, provisions of this management plan, and actions that citizens can take to continue the conservation of eagles in Florida.
- Develop and maintain web pages that contain popular, scientific, legal, and permitting information on bald eagles.
- Create a PowerPoint presentation that is adaptable to different audiences.
- Create a 2-minute video about bald eagle recovery.
- Promote FWC's Wildlife Alert Program in all materials.

Developers, Consultants, Government Agencies, Private Landowners, and Land-Use Planners:

- Create a handbook that describes new regulations, permit options, and management guidelines. This will include bald eagle biology and recovery status, effects of development on nesting eagles, conservation and minimization measures of this management plan, landowner stewardship incentives, and how to comply with state and federal laws and guidelines.

Conservation-oriented Citizens:

- Publish articles in appropriate print and electronic media that highlight key messages about bald eagle biology, recovery status, new rules and guidelines, how and where to observe eagles, and what citizens can do to aid eagle conservation.

Law Enforcement Personnel:

- Provide information on the management implications of federal and state delisting efforts on conservation of bald eagles in Florida. Emphasize that regulations and guidelines will continue to protect eagles, their nests, and their nesting territories.

Land Managers and Land-Acquisition Agents:

- Provide information on the need for continued acquisition of bald eagle habitats, particularly parcels within core breeding areas. Give presentations to inform managers about the FWC's bald eagle website <www.myfwc.com/imperiledspecies/eagle> and technical assistance available from the FWC to properly manage habitats around eagle nests.

Agricultural, Silvicultural, Ranching, and Aquacultural Interests:

- Prepare a fact sheet that includes information on land-use regulations, industry-specific management recommendations, and stewardship incentives.

Power Companies and Communication Tower Managers:

- Provide information on threats posed to eagles by powerlines and communication towers from electrocution or collision, and include recommendations for retrofitting utilities with "avian-friendly" hardware. Provide information on how to discourage eagles and other large raptors from perching on or near hazardous towers. Focus on areas with high raptor mortality, and near core bald eagle nesting areas

Landfill Managers and Veterinary Associations:

- Provide information about the importance of incinerating or quickly burying the carcasses of euthanized animals to prevent the deaths of eagles from secondary barbital poisoning.

Airport Managers, Federal Aviation Administration Officials:

- Provide information on rules and regulations pertaining to bald eagles and their nests on or adjacent to airports. Provide information on how to discourage eagles from frequenting areas around airports.

Research

Much information concerning the life history and habitat requirements of the bald eagle is known from previous studies. Among numerous other topics published from Florida are the following: research on bald eagle nesting requirements (Broley 1947, McEwan and Hirth 1979, Wood *et al.* 1989); effects of habitat protection (Nesbitt *et al.* 1993); analyses of setback distances and disturbance levels (Nesbitt *et al.* 1993, Millsap *et al.* 2004); and habitat use and movements (Wood 1992, Wood *et al.* 1998, Mojica 2006). Despite the wealth of information gathered previously, much information remains to be obtained or refined to ensure the long-term conservation of bald eagles in Florida.

Current or Planned Research

The FWC has already secured funding for the following projects.

Maximize effort to locate new or previously unreported bald eagle nests.
The FWC is using Geographic Information System (GIS) software to evaluate potential bald eagle nesting habitat to locate new nesting territories. This project will determine the precision of the current survey and what modifications need to be made.

Determine the number of nests on properties that are protected.
Although only about 33% of all known bald eagle nesting territories in Florida occur on public lands (Sullivan *et al.* 2006, Nesbitt *et al.* in review), it is thought that many more territories are located on privately-owned lands that are protected via perpetual conservation easements or similar instruments. The FWC will analyze the protection status of lands surrounding all bald eagle nesting territories in the state.

Evaluate the effectiveness of the FWC Eagle Management Guidelines and determine the long-term effects of development near eagle nests.
As additional residential, commercial, or industrial developments encroach on previously undisturbed bald eagle nesting territories, it would be beneficial to test not only the proximate effects of encroachment on eagle nests, but also the long-term post-construction history of nesting territories. Data supplied via nest monitoring and through the self-service, technical assistance website will assist in this effort. The FWC will determine the population trends and demographic characteristics of bald eagles in Florida, and will assess the long-term effects of human activities on eagle productivity and survivorship. Results of these and other analyses will

guide future research, and may result in lessening of regulations related to buffer zones around eagle nests, should population trends warrant such changes.

Future Research

The FWC needs to identify funding sources for the following proposed projects.

Determine the appropriateness of the FWC Eagle Management Guidelines.
Upon delisting the bald eagle in Florida, the FWC proposes to determine the level of protection needed to ensure a stable or increasing eagle population. This would include evaluating the need for and if needed, the required size of buffer zones around active or alternate bald eagle nests, and how many nesting territories need to be protected to ensure a stable or increasing population.

Determine the frequency of nest reoccupation.
Current guidelines provide for buffer zones to be maintained around abandoned eagle nests for five consecutive nesting seasons. The FWC proposes to determine to what degree abandoned eagle nests may be reoccupied.

Determine success of the delisting protection measures.
The FWC proposes to compare bald eagle data from Florida collected post-delisting with data collected pre-delisting to determine changes in population trends, management effects, and territory occupancy potentially resulting from the delisting protections or modifications.

Investigate the utility of a population viability analysis (PVA) to address specific questions about bald eagles in Florida.
A PVA can be of great use to modeling anticipated threats to bald eagles, such as those from continued encroachment of nest buffers by human activities. A PVA may also allow the determination of a conservation "end point," after which regulation of land-use of private lands that support eagle nests may no longer be necessary. Many components and parameters need to be considered to conduct an accurate PVA, including data on bald eagle survivorship, movements, and reproductive rates. The usefulness of a PVA will be evaluated based on questions that may be answered with available data.

Test the Bald Eagle Habitat Index of Viability (BEHIV) model to determine its value and accuracy as a tool for management.
The BEHIV analysis (Nesbitt *et al.* in review) uses GIS to score bald eagle nests in Florida based on several site-specific parameters. This analysis may identify the long-term stability of eagle nesting habitats, and could be used to aid the decision-making process when considering whether to regulate land-use within eagle nesting territories.

Study use of landfills by bald eagles in Florida.
Many eagles forage or loaf at landfills, where they may be exposed to secondary pentobarbital poisoning or other dangers. The FWC proposes to monitor the use of landfills by bald eagles in Florida, examining non-nesting roost populations, temporal use, age-class, land use, and other topics.

Study the use of artificial nesting structures by bald eagles in Florida.
The use of artificial structures as nesting substrates by bald eagles in Florida seems to be increasing. The FWC proposes to monitor the use and success of bald eagles nesting on these structures, and will determine if this behavior is a result of the increased availability of artificial substrates, an increasing willingness of bald eagles to nest in urban areas, and/or a decrease in the availability of suitable natural structures. Because most structures are not built to support bald eagle nests, and the nests may be considered hazards to human safety or property (as well as to the eagles and their eggs or nestlings), then the FWC will also examine ways to discourage eagles from nesting on these structures.

Study the movements of post-breeding adult bald eagles from Florida.
The FWC proposes to identify areas that support Florida's breeding bald eagles during the non-nesting season. This information is not well known and is important for understanding the risks and hazards posed to Florida's nesting eagles during migration and on their summering grounds. The FWC will partner with wildlife agencies in other states because most of Florida's nesting eagles summer outside the state.

Study how, when, and where Florida-produced eagles enter the breeding population.
The FWC proposes to study the tendency of eagles to return to their natal areas, sex ratios of adult eagles in the population, and habitat choices of eagles during their initial breeding attempt.

CHAPTER 5: IMPLEMENTATION STRATEGY

Priority Actions

A prioritized approach to this management plan will help maintain the conservation objectives and will facilitate the coordination necessary to successfully implement the plan. The actions in the summary list below are described in more detail in Chapter 4.

Priority Actions to be Undertaken by the FWC

- Approve and implement the proposed rule to protect bald eagles (68A-16.002, F.A.C.), simultaneously with removing the bald eagle from 68A-27.004 F.A.C.
- Implement the proposed permitting framework.
- Design a technical assistance system that operates effectively and efficiently to minimize FWC staffing requirements and provides optimal customer service and conservation benefit.
- Prepare press releases and print- or web-based materials to communicate to the concerned, conservation-oriented public and other stakeholders the new protection rules and FWC Eagle Management Guidelines.
- Develop and maintain a website to centralize information on bald eagles.
- Create a handbook for development professionals, local governments, water management districts, and private landowners that describes new regulations, stewardship incentives, and FWC Eagle Management Guidelines to be followed upon delisting of the bald eagle in Florida. Concentrate efforts to circulate the handbook and other presentations in regions that support bald eagle core nesting areas.
- Work with local governments to make them aware of FWC wildlife regulations.
- Work with water management districts and DEP to make them aware of FWC's regulation and habitat management guidelines for eagles.
- Work with Florida state agencies such as the Department of Transportation to develop agreements to streamline permitting and provide suitable conservation actions when needed.
- Apply for grants to fund implementation of additional conservation actions.
- Continue aerial surveys to monitor the reproductive success of bald eagles in Florida and the locations and status of their nests, and convey this information annually to stakeholders and other interested parties.

- Increase efforts to locate new or previously undiscovered bald eagle nests.

- Reevaluate the distance at which nesting bald eagles are disturbed.

Priority actions to be undertaken by other agencies with assistance from FWC

- Adopt language in land development codes and/or comprehensive plans to include wildlife protected under FWC rules, whether or not classified as imperiled.

Priority actions for private citizens

- Report new or previously undiscovered bald eagle nests to the FWC.

- Report violations of the bald eagle rule to the Wildlife Alert number (1-888-404-3922).

- Manage habitats on private lands to benefit bald eagles and other species of conservation concern.

- Support bald eagle conservation actions.

Required Resources and Other Costs Associated with Implementation

Many of the conservation actions identified in this management plan have been in place for many years; the FWC has been actively managing Florida's bald eagle population since the early 1970s. Ongoing conservation actions include annual monitoring of all known bald eagle nests and nesting territories, investigating and prosecuting illegal activities, recovering eagle carcasses, and maintaining a website for inquiries about bald eagles, their nests, and their nesting territories. The FWC will continue these activities upon delisting of the bald eagle.

Many FWC staff will assist with implementation of this plan. The FWC may require additional staff and funding to perform some or all of the following activities: continue the annual aerial nest surveys; update and expand the bald eagle website to provide information on permitting, the FWC Eagle Management Guidelines, and nest locations; implement incentive programs; work with local governments; and provide public education and outreach. Funds paid into the Bald Eagle Conservation Fund to compensate for permitted activities within buffer zones around eagle nests will provide the funding necessary for some of these activities. Expected annual costs of implementing the plan (in 2007 dollars) are as follows:

$ 6,950 – salary and benefits for Avian Taxa Coordinator for 10% time
$ 8,700 – salary and benefits for 5 Regional Nongame Biologists for 2.5% time each
$ 13,900 – salary and benefits for Avian Research Biologist for 25% time
$ 17,300 – salary for OPS Biological Scientist II 50% time
$ 14,800– salary for OPS Fish and Wildlife Technician 50% time
$ 14,000 – salary for OPS Biological Scientist (database manager) for 25% time
$ 40,800 – salary and benefits for one new Law Enforcement officer

$ 60,000 – salary and expenses for OPS Biological Scientist III to lead plan implementation
$ 80,500 – aerial survey costs (two years of funding is secured)
$ 5,000 – field and office equipment and supplies
$ 5,500 – salary for one Public Information Coordinator for 10% time
$ 8,000 – salary for Conservation Stewardship Coordinator for 20% time
$315,080 – Total Annual Recurring Cost

Expected one-time costs over five years are as follows:

$ 17,500 – development and production of brochures, handbooks, and fact sheets
$ 25,000 – startup costs for plan implementation

Efforts to effectively implement the plan will be greatly enhanced by cooperation with and active participation of external agencies. In particular, local governments, water management districts, DEP, and the USFWS will play important roles in implementing this plan, and numerous other stakeholders have expressed an interest in bald eagle issues.

Implementation Schedule

As noted above, conservation of the bald eagle through implementation of this management plan requires the cooperation of an array of agencies, managers, universities, landowners, and stakeholders. The following list is divided into priorities to be initiated in the first year and those to be initiated within the next five years to maintain the conservation goal and objectives for bald eagles.

Actions that the FWC should begin within the next 12 months

- Approve and implement the proposed rule to protect bald eagles and their nests;
- Implement a permitting framework as described in Chapter 4;
- Prepare press releases and print -or web-based materials to communicate to all audiences the key messages, new protection rules and guidelines, and ways that citizens can contribute to maintaining recovery;
- Continue law enforcement activities such as patrol, enforcement, and education;
- Develop a website to centralize all available information on bald eagles;
- Create resources (*e.g.*, a handbook or PowerPoint presentation) for development professionals, county governments, water management districts, and private landowners that describe new regulations, stewardship incentives, and FWC eagle management guidelines developed to protect bald eagles upon delisting. Concentrate efforts to circulate the handbook and make presentations in regions that support bald eagle core nesting areas (Figure 3, page 7);

- Continue aerial surveys to monitor the reproductive success of bald eagles in Florida and the locations and status of their nests and nesting territories;
- Expand efforts to locate new and previously undiscovered eagle nests;
- Reevaluate the distance at which some nesting bald eagles may be disturbed;
- Work to enhance and manage bald eagle habitats on state-owned and state-managed lands;
- Apply for grants to fund priority actions/research;
- Initiate random spot-checks of construction projects that are following the FWC Eagle Management Guidelines;
- Review the information provided during nest-monitoring events and evaluate the annual nest-monitoring protocol to ensure that the information collected can assist in answering some of the most pressing management questions.

Actions that local governments and other state agencies should begin within the next 12 months with assistance from the FWC

- Adopt procedures within ordinances to assist and assure consistency with management guidelines and policies for bald eagles.
- Work to enhance and manage bald eagle habitat on state-owned and state-managed state-owned lands.

Actions that the FWC should continue or implement during the next five years with assistance from outside entities

- Continue aerial surveys to monitor the reproductive success of bald eagles in Florida and to update the locations and status of eagle nests and nesting territories;
- Determine the percentage of bald eagle nests that are protected on public lands or by perpetual conservation easements, or otherwise unlikely to be further developed;
- Continue to monitor and manage fish populations and aquatic habitats;
- Continue law enforcement activities such as patrol, enforcement, and education;
- Develop and maintain funding sources for continued monitoring and data analysis of bald eagle nests and nesting territories;
- Study long-term trends in the statewide bald eagle population;

- Study the frequency at which bald eagles reactivate an abandoned nest, and after how many years of non-use;
- Study the effectiveness of post-delisting regulations and recommendations;
- Test the value and accuracy of the BEHIV model (Nesbitt *et al.* in review) as a tool for habitat management;
- Study the long-term effects of development near bald eagle nests;
- Study the use of artificial nesting structures by bald eagles in Florida;
- Study the movements of post-breeding bald eagles after they migrate out of Florida;
- Study how, when, and where Florida-produced bald eagles enter the breeding population;
- Monitor the sources and extent of bald eagle mortality;
- Prepare a fact sheet that describes the need for continued acquisition of bald eagle habitats, particularly within core nesting areas;
- Create and distribute a brochure with key messages about bald eagle biology and recovery status, observing eagles, and what citizens can do to aid recovery;
- Prepare a fact sheet that includes information on land-use regulations, the threat posed to eagles by power lines, industry-specific management recommendations, and stewardship incentives;
- Create a video highlighting key messages and citizen involvement, and post this to FWC's website.

Priority action to be undertaken by local governments with assistance from the FWC within the next five years

- Offer expedited permit review and/or reduced development review fees to developers who voluntarily follow the FWC Eagle Management Guidelines.
- Adopt procedures within ordinances to assist and assure consistency with science-based management guidelines and policies for bald eagles.

Management Plan Review and Revision

To ensure that the conservation goal of this management plan is maintained, the FWC will review the status of Florida's bald eagle population based upon annual surveys of nests and nesting territories. This management plan will be reviewed and revised after five years (*i.e.*, in 2013). Significant changes to the management plan will be made with public input and Commission approval.

CHAPTER 6: ANTICIPATED IMPACTS

Economic Impacts

This preliminary assessment of economic impacts of delisting the bald eagle in Florida was based on the conservation strategies and actions proposed in this management plan.

Estimated cost to the FWC of implementing proposed conservation strategies and actions.

Resources required to implement this bald eagle management plan are described in Chapter 5. The conservation actions proposed in the management plan will require a commitment of staff time to review applications for FWC Eagle Permits, develop landowner-incentive programs, coordinate research and monitoring programs, and develop and implement appropriate education and outreach programs. One-time costs associated with producing informational brochures over five years are estimated to be $17,500. Annual costs for staff to implement the management plan are estimated to be $315,080. Of these totals, the one-time cost to produce brochures ($17,500), start-up costs ($25,000), and approximately $60,000 of annual costs represent new costs to the FWC, for which funding sources must be secured.

It is unlikely that the FWC can conduct additional activities with existing staff and resources. Management actions proposed in this plan will need to be prioritized along with other agency programs, species needs, and available resources. New funding and personnel dedicated to implementation of this plan are necessary to accomplish all outlined strategies and tasks. The exact costs will depend on the amount of resources that local governments and landowners can devote to bald eagle conservation in Florida.

Estimated cost to potentially affected parties of implementing the proposed conservation strategies and actions.

The permits required under the proposed rules are no-cost permits. Conservation and minimization measures recommended under FWC Eagle Permits may increase costs incurred by permit applicants. The exact costs would vary from site to site depending on the size of the project, the size of the recommended buffer, and potential impacts to bald eagles. Sale of conservation easements around an active or alternate bald eagle nest will financially benefit some owners of private lands, and may also increase their eligibility to receive funds through state and federal land-management incentive programs.

Actions listed in the FWC Eagle Management Guidelines may lower costs to private landowners. By providing the option of following these guidelines instead of applying for a FWC Eagle Permit, developers can conserve bald eagle habitats rather than having to compensate for construction activities.

Social Impacts

The bald eagle was chosen as the national symbol of the United States on 20 June 1782 because of its longevity, great strength, and majestic bearing. The bald eagle appears on the Great Seal of

the United States and represents freedom. President John F. Kennedy wrote that, **"**The Founding Fathers made an appropriate choice when they selected the bald eagle as the emblem of the nation. The fierce beauty and proud independence of this great bird aptly symbolize the strength and freedom of America."

During the public comment period of this management plan, one social theme was repeatedly expressed: That delisting of the bald eagle could create the perception that there is less need for conservation and management. This misperception could potentially lead to an increase in the illegal take of or disturbance to eagles, which may negatively impact the population. If this were to happen, it would erode public confidence in the FWC's ability to manage the state's wildlife.

Conversely, successfully managing the public's perception about the delisting of bald eagles in Florida will help to accomplish the goals of this management plan, and will enhance public confidence in the agency. The bald eagle has successfully recovered from its imperiled status. The FWC has the opportunity to make the public aware of this success story, and to assure the public that conservation of bald eagles will continue.

This management plan includes an Education and Outreach section that identifies the need to explain to key audiences the rules and guidelines that remain in place for the protection of bald eagles, their nests, and their nesting territories. This plan also commits that the current level of law enforcement will not decrease upon delisting of the eagle. These actions should create public awareness of the continuance of actions that protect bald eagles in Florida, and should generate support for this management plan.

The delisting process will place responsibility on local governments to remain involved with regulations and guidelines that protect bald eagles and their habitats under the guidance of this management plan. This responsibility will create a closer working relationship between FWC and local governments.

Ecological Impacts

Upland and aquatic habitats that support bald eagles in Florida also support a large number of other species. Acquiring lands that support eagle nests, or placing buffer zones around eagle nests into perpetual conservation easements, will benefit a host of other plant and animal species. Continued conservation and management of aquatic habitats will provide healthy feeding areas for bald eagles and will benefit a multitude of other species that depend on Florida's aquatic environments. Electrocution-related mortality of bald eagles and other birds may be reduced as a result of power companies incorporating "avian-friendly" devices and fittings on their equipment.

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APPENDIX 1: LINKS TO ONLINE USFWS DOCUMENTS

USFWS.1999. Proposed rule to remove the bald eagle in the Lower 48 states from the list of endangered and threatened wildlife. <http://www.fws.gov/southwest/es/arizona/Documents/SpeciesDocs/BaldEagle/baldeagledelisting99.pdf>.

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USFWS. 2006. Bald eagle monitoring guidelines (Florida). <http://www.fws.gov/northflorida/BaldEagles/2007-BE-Monitoring-Guidelines-without-figures.htm>.

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USFWS. 2007. Draft post-delisting monitoring plan for the bald eagle (*Haliaeetus leucocephalus*). <http://www.fws.gov/midwest/eagle/protect/DraftBAEAPDM.html>.

USFWS 2007. Proposal to create a permit process for bald and golden eagles. <http://www.fws.gov/policy/library/07-2697.pdf>.

APPENDIX 2: LIST OF FWC STAKEHOLDERS

Individuals on the FWC's stakeholder contact list, some of whom provided comments or other assistance to the bald eagle management team. *A member of the "ad-hoc" bald eagle committee who participated in meetings, November 2007–January 2008.

STAKEHOLDER	AFFILIATION
Yvette Alger	St. Lucie County
Bonnie Basham	Standing Watch
Teresa Bishop	St. Johns County
Jan Brewer	St. Johns County
Karl Bullock	Golder Associates
Barbara Burgeson	Collier County
Gail Carmody	U.S. Fish and Wildlife Service
Resee Collins	U.S. Fish and Wildlife Service
Ron Concoby	Independent scientist
Lori Cunniff	Orange County
Amy Dierolf	Progress Energy
Seth Drawdy	Foley Land and Timber Company
Michael Drummond	Alachua County
Todd Engstrom	Florida Ornithological Society
Susan Farnsworth	Citrus County
Sammi Fitch	City of Cape Coral
*Monica Folk	The Nature Conservancy
Jerris Foote	Sarasota County Parks and Recreation
Shane Fuller	St. Joe Company
*Steve Godley	Biological Research Associates, Inc.
Phil Gornicki	Florida Forestry Association
Mary Ann Gosa	Florida Farm Bureau
Richard Hamann	Center for Governmental Responsibility
Dennis Hardin	Florida Division of Forestry
David Hartgrove	Halifax River Audubon Society
Clay Henderson	Holland and Knight LLP
Rob Hicks	Plum Creek Timber Company
Stephen Hofstetter	Alachua County
Wade Hopping	Wade Hopping Associates
Kim Iverson	South Atlantic Fisheries Management Council
Steve Kintner	Volusia County
*Tom Logan	Breedlove, Dennis & Associates, Inc.
*Laurie Macdonald	Defenders of Wildlife

*Candace Martino	U.S. Fish and Wildlife Service
Matt Osterhoudt	Sarasota County
Franklin Percival	Florida Cooperative Fish & Wildlife Research Unit
Barbara Jean Powell	Everglades Coordinating Council
*Doug Rillstone	FL Chamber Commerce/Developers Assoc.
Preston Robertson	Florida Wildlife Federation
Vicki Sharpe	Florida Department of Transportation
Arnette Sherman	West Volusia Audubon Society
Stan Simpkins	U.S. Fish and Wildlife Service
Parks Small	Florida Department of Environmental Protection
Caroline Stahala	U.S. Fish and Wildlife Service
*Tony Steffer	Raptor Management Consultants
Andy Stevens	Charlotte County
Becky Sweigert	Lee County
Tim Telfer	Flagler County
Kim Trebatoski	Lee County
Tom Trettis	Wilson Miller Engineering
Christina Uranowski	Osceola County
Carol Wehle	South Florida Water Management District
*Lynda White	Audubon of Florida
*Julie Wraithmell	Audubon of Florida