

NOTICE OF PROPOSED RULE

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Water Resource Management

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
62-346	Environmental Resource Permitting in Northwest Florida
RULE NOS.:	RULE TITLE:
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PURPOSE AND EFFECT: Chapter 62-346, F.A.C., has been amended to implement Phase 2 of the Environmental Resource Permit (ERP) rules within the Northwest Florida Water Management District (NFWFMD, also referred to as the “Panhandle”). These amendments add environmental criteria, including regulation of dredging and filling in, on, or over connected and isolated wetlands and other surface waters to the Phase 1 rules governing stormwater management systems, which became effective on October 1, 2007. As required by Section 373.4145, F.S., the permitting thresholds and requirements are designed to: (1) improve the management and storage of surface waters with minimal impact on property interests in consideration of the rural nature, current development trends, and abundant natural resources within the Panhandle; (2) enable the Department to pursue streamlining of this rule with the federal wetland permitting program; and (3) implement other streamlining measures to the maximum extent possible, such as electronic permitting, field permitting, and informal wetland determinations. The rule also incorporates the provisions specified in Section 373.4145(3), F.S., and “grandfathering” provisions for activities that will continue to be governed under Chapters 62-25 and 62-312, F.A.C. When the Phase 2 rules go into effect, a separate wetland resource permit under Chapter 62-312, F.A.C., which regulates dredging and filling in surface waters of the state, will no longer be required, except for those activities as provided in Section 373.4145(5), F.S.

This rule includes amendments to Applicant’s Handbook Volumes I and II. Volume I contains procedures and general criteria used in Chapter 62-346, F.A.C., and has been amended to include new environmental criteria. Volume II, which addresses the design and performance standards for stormwater management systems, has been amended to address issues that were identified during implementation of the Phase 1 rules. This rulemaking also

includes amendments to the “Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between Northwest Florida Water Management District and Department of Environmental Protection.”

SUMMARY: The revisions to Chapter 62-346, F.A.C., including the Applicant’s Handbook Volumes I and II generally: (1) remove language restricting the rule to stormwater management system regulation, as required by Phase I; (2) add “environmental” provisions adopted by the Suwannee River, St. Johns River, Southwest Florida, and South Florida Water Management Districts in 1995 to implement the requirements of Section 373.414, F.S., throughout the rest of the state; and (3) update and correct language based on experience learned and comments received from staff and the public since the Phase 1 rules were first implemented. The format and number system used in the rules and the incorporation of the Applicant’s Handbook is the same as is used by the water management districts outside of the Panhandle.

Rules 62-346.010 and .020, F.A.C., are modified to make minor technical revisions. The most significant change is the addition of subsection 62-346.020(5), F.A.C., reflecting the linkage of the regulatory and proprietary programs in accordance with the provisions of Sections 253.77 and 373.427, F.S.

Rule 62-346.030, F.A.C., is amended to: (1) add a definition of “direct discharge;” (2) add definitions related to dredging and filling in wetlands and other surface waters; and (3) update, correct, and clarify terms that were previously defined in the Phase 1 rules.

Rule 62-346.050, F.A.C., is modified to establish thresholds in subsection (1) for certain minor activities, below which a permit will not be required. These activities were previously established as exemptions in subsection 62-346.051(3), F.A.C., in the Phase 1 rules. This change is consistent with the way other water management district rules address minor activities meeting certain limitations and conditions. Subsection (2) is amended to include language that also was moved from the exemption in subsection 62-346.051(3), F.A.C.

The exemption in subsection 62-346.051(3), F.A.C., is deleted for the reasons discussed above. The exemption for private docks in paragraph (5)(a) is amended to limit the number of exempt docks that can be built on a single parcel of land, using the same language that exists in the dock exemptions in Section 403.813(1)(b), F.S., and in the existing dredge and fill and ERP rules of the Department and water management districts; this limitation was inadvertently overlooked during adoption of the Phase 1 rules. The exemption for seawall and riprap restoration in paragraph (14)(b) is amended to allow restoration when a seawall or riprap has been rendered non-functional by a discrete storm event. The exemption for electrical distribution substations in paragraph (16)(g) is amended to allow stormwater treatment alternatives to swales and to prevent direct discharges to Outstanding Florida Waters. A new exemption for modification or reconstruction of an existing, previously unpermitted conveyance system by a governmental agency is added in subsection (18), reflecting a similar exemption currently in paragraph 62-25.030(2)(c), F.A.C.

Paragraph 62-346.060(1)(a), F.A.C., is amended to reflect that future reliance on a conceptual approval permit is dependent on that permit remaining consistent with any Total Maximum Daily Load or Basin Management Action Plan approved under the provisions of Section 403.067(7), F.S., and Chapter 62-304, F.A.C.

Subsection 62-346.070(2), F.A.C., is amended to update the procedures for verifying qualification for an exemption, including adoption of a new Form 62-346.900(11), “Request for Verification of an Exemption.” Subsection (3) is added to ensure that applications are received only from entities that have sufficient title interest in the property subject of an application. Subsections (5) and (6) are added to provide that a permit under Chapter 62-346, F.A.C., also constitutes issue or waiver of a water quality certification under Section 401 of the Clean Water Act, and concurrence that the activity is consistent with the relevant statutory authorities under Florida’s federally approved Coastal Zone Management Program. In accordance with Section 403.9328(5), F.S., subsection (9) is added to reflect that a separate permit for trimming or altering mangroves is not required for activities permitted under Chapter 62-346, F.A.C.

Rule 62-346.071, F.A.C., is amended to include new fees for dredge and fill activities in the fee schedule that was adopted in the Phase 1 rule. The fees for those activities are the same as the fees for the equivalent ERP activities already adopted in paragraph 62-4.050(4)(h), F.A.C., and also have been amended to reflect the minimum fees and the Consumer Price Index adjustments to fees required by Section 373.109, F.S.

The new Rule 62-346.075, F.A.C., provides procedures for the concurrent review of an ERP individual permit located on state-owned submerged lands as authorized by Sections 253.77 and 373.427, F.S. The procedures are identical to those already adopted in Rule 62-312.065, F.A.C., for dredge and fill activities in the Panhandle and Rule 62-343.075, F.A.C., for ERP activities in the rest of the state.

New paragraphs 62-346.090(1)(g) and (2)(l), F.A.C., require distribution of noticed general and individual permits for activities in wetlands and other surface waters to the U.S. Army Corps of Engineers and specific state agencies with statutory authorities under the State’s Coastal Zone Management Program. Paragraph 62-346.090(1)(e), F.A.C., is

amended to inform applicants that they will be notified if an application for an ERP qualifies for an exemption. Paragraph (2)(c) is amended to provide that an applicant may declare an application to be complete at any time, as provided in Section 373.4141, F.S. Paragraph (2)(d) is amended to reflect that the Department will not refund any tendered application fee upon a determination that an activity is exempt from permitting, because this refund, as required by Section 120.60, F.S., has been superseded by the provisions of Section 373.109, F.S., effective July 1, 2008.

Subsection 62-346.091(1), F.A.C., is amended to update documents that are incorporated by reference for use in implementing Chapter 62-346, F.A.C. Applicant's Handbook Volume I includes significant new text to implement the Phase 2 rules, including adoption of Appendix E, F, and G. Applicant's Handbook Volume II is revised to incorporate "lessons learned" since the Phase 1 rules were implemented, as discussed below. The "Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between Northwest Florida Water Management District and Department of Environmental Protection" is revised to provide the NFWFMD with new responsibilities for reviewing and taking agency action on Phase 2 applications, namely to increase NFWFMD's review of activities located in wetlands and other surface waters from 0.5 acre to up to 5 acres. Subsection (d) is revised to omit a number of provisions from Chapter 6 of the *Florida Development Manual* that are now out of date and conflict with more specific requirements contained in Chapter 62-346, F.A.C., and the Applicant's Handbook. Chapter 5 of the *Florida Development Manual* is added because it contains helpful information on calculating runoff volume using the rational method, the use of which is added following receipt of public comments. The new *State of Florida Erosion and Sediment Control Designer and Reviewer Manual* is added in paragraph (f).

Subsection 62-346.095(1), F.A.C., re-titled "Operation, Maintenance, and Inspections," is amended to reflect that multi-ownership of a system may be appropriate in some cases. Paragraph (1)(b) is amended to address the unique circumstances of mining operations. Subsection (2) is amended to add simplified provisions for converting systems serving individual, private single-family dwelling units from the construction to the operation and maintenance phase, and to clarify that conversion to the operation and maintenance phase for all permittees will not require payment of a fee. Subsection (3) is amended to provide that the conversion to the operating phase for any phase or independent portion of a larger system cannot occur until after construction of all roads, as well as stormwater conveyance, treatment and attenuation systems for that phase have been completed. Subsection (6) is amended to provide that systems for individual, private single-family dwelling units are not subject to an automatic three-year inspection following conversion to the operation phase, and to clarify that any permit is subject to special permit conditions to provide specific inspection requirements depending on the nature of the system.

Paragraph 62-346.100(1)(a), F.A.C., is amended to delete language that incorrectly implied that noticed general permits were subject to modification. Paragraph (1)(d) is amended to clarify changes that will qualify as minor permit modifications. Subsection (3) is amended to require compliance with the additional conditions for issuance in Rule 62-346.302, F.A.C., when applicable, as a requirement for qualifying for a permit modification.

Rule 62-346.150, F.A.C., is added to provide requirements for relinquishing and abandoning a system as authorized by Section 373.426, F.S.

Subsection 62-346.301(1), F.A.C., is amended to expand the scope of the conditions that will apply to issuance of all surface water management systems. New paragraph (d) provides that a permitted system must not adversely affect the value of functions provided by wetlands and other surface waters to fish and wildlife and listed species; this comports with the ERP rules in the rest of the state. The presumption provisions in Subsection (3) are deleted, and subsection (4) is added because the scope of qualifying for issuance of a Phase 2 permit is broader than was the case under the Phase 1 rules.

New Rule 62-346.302, F.A.C., incorporates the additional conditions for issuance of an ERP, identical to the ERP rules in the rest of the state. Specifically, paragraph (a) provides the public interest balancing test factors in Section 373.414(1)(a), F.S., that will be applied to activities located in wetlands and other surface waters. Paragraph (b) requires consideration of the cumulative impacts on wetlands and other surface waters for all activities, as required by Section 373.414(8), F.S. Paragraph (c) provides criteria for protecting waters that are used for shellfish harvesting, as required by Sections 403.061(29) and 373.414(9), F.S. Paragraph (d) incorporates provisions for protecting estuaries and lagoons from the harmful effects of vertical seawalls, as required by Sections 373.414(5) and 373.414(9), F.S. Subsection (2) requires a consideration of an applicant's past history of violating wetland resource and Part IV, Chapter 373, F.S., rules in the same manner as those violations are considered in the ERP rules in the rest of the state.

Paragraph 62-346.381(1)(b), F.A.C., is amended to require placement of a sign during construction, which will aid in compliance inspections. Paragraph (d) is updated to reflect current erosion and sedimentation methodology and references. Paragraph (g) is amended to clarify as-built certification requirements, including providing simplified procedures associated with construction of private single-family dwelling units. The requirement for on-site observation by a registered professional is stricken in response to comments. Specific requirements of the

certification are stricken in favor of more general language, which was also included in the as-built certification Form 62-346.900(4). Paragraph (k) is amended to reflect that entities with the power of eminent domain or contracts to purchase must demonstrate proof of ownership before construction, and paragraph (n) is amended to require transfer of a lease to the current landowner or new lessee prior to or on the date of expiration of a lease; these changes are intended to reduce potential trespass and compliance conflicts.

Most of the forms in Rule 62-346.900, F.A.C., are amended to reference surface water management systems instead of stormwater management systems. The application form in subsection 62-346.900(1), F.A.C., is amended to: (1) incorporate informational requirements necessary to evaluate activities in, on, over, or that may affect wetlands and other surface waters; (2) update and correct language; (3) add provisions to facilitate application review; and (4) standardize the form with the ERP application used in the rest of the state, which also serves as a joint application with the U.S. Army Corps of Engineers. A new Form (5) is added to provide a streamlined process for an individual, private single-family dwelling unit to inform the Department of completion and request inspection of the system. New Form (11) provides a standardized format for a party to request verification of an exemption. Copies of the forms are contained in Appendix C within Applicant's Handbook Volume I.

Applicant's Handbook Volume I, re-titled "General and Environmental," is updated to reflect the changes described to Chapter 62-346, F.A.C. In addition, several new sections are added: (1) section 3.6, which discusses procedures for relinquishment and abandonment of systems; (2) criteria for storage and conveyance are removed from Applicant's Handbook Volume II and moved to a new section 8.4.5; (3) criteria on low flow and base flow were removed from Applicant's Handbook Volume II and moved to new sections 8.4.6 through 8.4.6.2; (4) sections 8.5 through 8.5.2, explaining the Additional Conditions for Issuance provisions from Rule 62-346.302, F.A.C.; (5) section 8.4.7, providing guidance on design and performance standards for dams; and (6) all of section 10, which provides a discussion, taken from the Applicant's Handbooks and Basis of Review from the four water management districts outside of the Panhandle, on the environmental criteria used in assessing activity impacts to wetlands and surface waters. Appendix A is amended to revise the Operating Agreement between the Department and the NFWMD, most notably increasing the District's responsibility for permitting, compliance, and enforcement from no more than 0.5 acre of dredge and fill activity for transportation impacts (ingress, egress, and interior roadways, bridges, and culvert crossings, but excluding individual residential driveways), to five or fewer acres of wetland or other surface water impact for any activity. The ERP Application Form, 62-346.900(1), is expanded in Appendix C to include additional information needed for it to serve as a joint application with the U.S. Army Corps of Engineers (in accordance with the Department/WMD/USACE Operating Agreement last amended November 30, 1998), and to authorize activities on state-owned submerged lands; these changes are generally consistent with the ERP application form used throughout the rest of the state. A new notice of completion of construction form 62-346.900(5) is added to simplify the process for converting construction permits for individual, private single-family dwelling units to an operation and maintenance phase. Also added is a new form 62-346.900(11), for all persons to request verification of an exemption. New checklists are included in Appendix D for homeowners and property owner associations to use for purposes of demonstrating that they have adequate legal and financial responsibility to operate and maintain a permitted system. A new Appendix E provides standardized financial responsibility documents required for mitigation activities. A new Appendix F provides guidance for evaluating activities involving borrow pits, including discussion on when or whether an ERP permit is required to continue mining in a borrow pit that was in existence prior to the effective date of the Phase 2 rules. Finally, a new Appendix G provides procedures for evaluating when modifications to stormwater treatment systems previously regulated under Chapter 62-25, F.A.C., would require a permit under Part IV of Chapter 373, F.S.

Applicant's Handbook Volume II contains numerous amendments needed to address questions and issues that have been identified since the Phase 1 rules were adopted on October 1, 2007. As in Applicant's Handbook Volume I, some of the edits are to improve clarity and content, and to make technical corrections and updates. Other, more significant edits include: (1) new language in section 3.3(a) deleting National Resource Conservation Service Type II rainfall distribution requirements and make the use of the Type III distribution available throughout the Panhandle; (2) striking the use of the F.D.O.T. Drainage Manual Appendix B as a tool for estimating rainfall intensity and volume in section 3.3.4; (3) addition of language in section 4.5.1 which provides that the addition of impervious surfaces to existing systems, and projects that discharge to tide, will not be required to meet streambank protection criteria; (4) a new section 4.5.2 that provides guidance and criteria for estimating peak runoff rates using the modified rational formula; (5) a new section 4.10 clarifying that dry retention ponds, detention ponds with filtration, dry detention with underdrains, and wet detention ponds are considered impervious when performing hydrologic runoff calculations; (6) a new section 4.11 adding special criteria for rural subdivisions that generally contain large lots with very little impervious area; (7) a new section 4.12 providing a detailed explanation of the water quality volume calculation as it relates to the amount of runoff that must be retained; (8) new language in section 8.6 providing criteria for applicants who do not want to install a littoral zone around the perimeter of a

proposed wet detention pond system; (9) new language in section 8.9 providing that control elevations (normal pool stage for wet detention ponds) shall be set at or above the normal ground water elevation; (10) deletion of language in section 11.2 that implied that Vegetated Natural Buffers (VNBs) could only be used in conjunction with another “primary” treatment system that complied with the BMP section of the Handbook; (11) deletion of inaccurate runoff coefficient values from Table 14-1; (12) corrections to the design example for wet detention systems in section 14.4; (13) a new section 17.4 providing criteria for mines and other excavations that may occur within limestone and Karst geology; and, (14) a new Appendix B, providing limitations and operation and maintenance guidance for “detention with filtration” systems and the checklist for design parameters for these systems.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will have an impact on small business. A SERC has been prepared by the Agency. The SERC addresses both “phases” of ERP implementation in the panhandle, including the management and storage of surface waters (MSSW) and the dredging and filling of wetlands. The SERC estimates that approximately 1,100 permit applicants will be affected by the new permit program annually, including approximately 341 small business applicants and 94 small governmental entity applicants. The general public will benefit though more stringent stormwater controls, improvements to water quality and enhanced wetlands management.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 161.055, 253.03(7), 253.77, 258.43, 373.026(7), 373.026, 373.043, 373.044, 373.046, 373.109, 373.113, 373.118, 373.413, 373.414(9), 373.414, 373.4145, 373.416, 373.418, 373.421(2), 373.421, 373.426, 373.427, 373.439, 380.06, 403.0877, 403.805(1) FS.

LAW IMPLEMENTED: 120.569(2), 120.60, 120.60(2), 120.60(6), 161.041, 161.055, 218.075, 253.03, 253.77, 258.42, 258.43, 373.019, 373.026, 373.026(7), 373.042, 373.0421, 373.043, 373.046, 373.109, 373.117, 373.118, 373.119, 373.403, 373.406, 373.409, 373.413, 373.4132, 343.414, 373.4141, 373.4142, 373.4145, 373.416, 373.416(2), 373.418, 373.419, 373.421, 373.421(2), 373.4211, 373.422, 373.423, 373.426, 373.427, 373.4275, 373.428, 373.429, 373.433, 373.436, 373.439, 380.06, 380.23, 403.813(2), 403.805(1), 403.0877, 403.813(12) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Alice Heathcock, Florida Department of Environmental Protection, Office of Submerged Lands and Environmental Resources, 2600 Blair Stone Road — MS 2500, Tallahassee, Florida 32399-2400; telephone (850)245-8483; e-mail: Alice.Heathcock@dep.state.fl.us; or facsimile (850)245-8499. (OGC No. 07-1321)

THE FULL TEXT OF THE PROPOSED RULE IS:

CHAPTER 62-346

ENVIRONMENTAL RESOURCE PERMITTING IN NORTHWEST FLORIDA

62-346.010 Policy and Purpose.

This rule provides the requirements for processing environmental resource permits, under Section 373.4145(1)(a), F.S., and for obtaining formal determinations of the landward extent of wetlands and surface waters under Chapter 62-340, F.A.C., within the geographical jurisdiction of the Northwest Florida Water Management District (NFWFMD or District). This rule does not preclude the application of any other permit requirements or procedures in other chapters of Title 62, F.A.C. The requirements of this chapter are in addition to and not in lieu of the requirements specified in the Applicant's Handbook Volumes I and II incorporated by reference in Rule 62-346.091, or Chapter 62-341, F.A.C. Unless otherwise specified in this Chapter, "Department" means the Department of Environmental Protection. However, when implemented by the NFWFMD, the term "Department" means "Northwest Florida Water Management District."
Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.418, 373.415, 403.805(1) FS. Law Implemented 373.409, 373.413, 373.4141, 373.4142, 373.4145, 373.416, 373.423, 373.426, 373.428, 373.429 FS. New 10-1-07, Amended _____.

62-346.020 General Provisions.

(1) This chapter applies to activities within the geographical jurisdiction of the NFWFMD and shall be implemented by both the Department of Environmental Protection ("Department") and the NFWFMD pursuant to Section 373.4145, F.S. The Department and NFWFMD have entered into an Operating Agreement (see definition in Rule 62-346.030, F.A.C.), determining which agency is responsible for reviewing and taking agency action on specified types of activities categories of applications and otherwise implementing the provisions of Part IV of Chapter 373, F.S., within the geographical jurisdiction of the NFWFMD.

(2) Except for those activities that continue to be governed by Chapter 62-25 or 62-312, F.A.C., pursuant to Section 373.4145(6), F.S., all Department actions concerning environmental resource permit applications, suspensions, revocations, modifications, extensions, and transfers, including emergency actions, associated with activities regulated under Part IV of Chapter 373, F.S., within the geographical jurisdiction of the NFWFMD are governed by this chapter, the Applicant's Handbook Volumes I and II, Chapter 62-341, F.A.C., and the Operating Agreement.

(3) The responsibilities for the review, and agency action on notices, petitions, permits, and compliance, and enforcement of activities that cross the geographical boundary of the NFWFMD will be governed by interagency agreement as provided in Section 373.046(6), F.S. Applications for activities requiring a permit under this chapter that extend into the geographical area of the Suwannee River Water Management District shall be submitted to and processed by the district office of the Department or water management district covering the location where the majority of the project activities are proposed, and in accordance with the Operating Agreement between the Department and the applicable water management district as described in subsection (1) above, or in Chapter 62-113, F.A.C.

(4) No Change.

(5) Applicants are advised that Section 253.77, F.S., states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, without obtaining the required lease, easement, or other form of consent authorizing the proposed use. Therefore, an applicant is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on state-owned submerged lands or other state-owned lands. For activities that are located on state-owned submerged lands, Sections 253.77 and 373.427, F.S., and Rules 18-21.00401 (October 12, 1995) and 62-346.075, F.A.C., require that neither the authorization to use sovereign submerged lands nor an individual (including conceptual approval) environmental resource permit may be issued unless the activity qualifies for both. Until the effective date of the rules adopted under Section 373.4145(1)(b), F.S., dredging, filling, and construction in, on or over surface waters of the state require separate permits under Chapter 62-312, F.A.C.
Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.414, 373.415, 373.418, 373.421, 403.805(1) FS. Law Implemented 373.413, 373.414, 373.4145, 373.416, 373.421, 373.426 FS. History — New 10-1-07, Amended _____.

62-346.030 Definitions.

Except as otherwise defined in this chapter or in the Applicant's Handbook, the definitions in Rules 62-4.020, 62-340.200, and 62-341.021, F.A.C., and the following definitions apply to this chapter and to the Applicant's Handbook Volumes I and II. ~~However, the definitions in subsections 62-346.030(8), (11), (17), (20), (24), (29), (35), (39), and (42), F.A.C., are not applicable under this rule until the effective date of the rules adopted under Section 373.4145(1)(b), F.S.:~~

(1) No change.

(2) "Activity" or "Activities," means construction, alteration, operation, maintenance, abandonment, or removal of any ~~stormwater~~ surface water management system. ~~Upon the effective date of the rules adopted under Section 373.4145(1)(b), F.S., this term will also include including dredging or filling, as those terms are defined in Sections 373.403(13) and (14), F.S in, on, or over surface waters of the state.~~

(3) through (6) No change.

(7) "Completion of Construction" means the time when all components of the ~~stormwater~~ surface water management system are installed and fully functional.

(8) No change.

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

(10) through (11) No change.

~~(12) "Department" means the Department of Environmental Protection. However, when implemented by the NWFWM, the term "Department" means "Northwest Florida Water Management District."~~

~~(12)(13) "Detention" means the collection and temporary storage of stormwater with subsequent gradual release of the stormwater.~~

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

(14) through (15) No change.

(16) "Endangered species" means those animal species that are listed in Rule 68A-27.003 (as amended December 16, 2003), F.A.C., and those plant species that are listed as endangered in 50 Code of Federal Regulations 17.12 (as amended April 8, 2004), when such plants are found to be located in a wetland or other surface water).

~~(17)(16)~~ No change.

~~(18)(17)~~ "Enhancement" means improving the ecological value of wetlands, other surface waters, or uplands that have been degraded in comparison to their native ~~historic~~ condition.

(18) through (22) renumber (19) through (23) No change.

~~(24)(23)~~ "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, including excavated waterbodies or a series of excavated waterbodies, to the landward extent of any of the following waters as defined in Rule 62-312.030, F.A.C.:

(a) Atlantic Ocean out to the seaward limit of the state's territorial boundaries;

(b) Gulf of Mexico out to the seaward limit of the state's territorial boundaries;

(c) Bays, bayous, sounds, estuaries, lagoons and natural channels and natural tributaries thereto;

(d) Rivers, streams and natural tributaries thereto;

(e) Natural lakes;

(f) The waters as defined in Sections 403.031(13)(a) and (b), F.S.;

(g) Waters within mosquito control impoundments constructed as part of a governmental mosquito control program, excluding those portions which have become wetlands or other surface waters based on a change to vegetative dominance as defined in Chapter 62-340, F.A.C., solely because of construction of the impoundment. Specifically included as wetlands and other surface waters are those areas which were naturally occurring wetlands or other surface waters before construction of the impoundment but which have had their connection to other wetlands or other surface waters severed as a result of the construction of dikes. Also included as wetlands and other surface waters are areas where vegetative dominance of obligate, facultative wet, and facultative species, as defined in Rule 62-340.450, F.A.C., has been lost solely because of construction of the impoundment.

~~(25)(24)~~ "Listed species" means those animal species that are endangered, threatened or of special concern and are listed in Rules 68A-27.003 (as amended December 16, 2003), 68A-27.004 (as amended May 15, 2008), and 68A-27.005 (as amended November 8, 2007), F.A.C., and those plant species listed in 50 Code of Federal Regulation 17.12, (as amended April 8, 2004) ~~June 19, 2006~~, when such plants are located in a wetland or other surface water.

~~(26)(25)~~ "Littoral zone" means that portion of a stormwater management system ~~wet detention pond~~ that is designed to contain rooted emergent aquatic plants.

~~(27)~~(26) “Materials,” 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., and Chapter 5L-3, F.A.C. (April 9, 2007).

(27) through (29) renumber (28) through (30) No change.

~~(31)~~(30) “Off-line” means the storage of a specified portion of the stormwater in such a manner so that subsequent runoff in excess of the specified volume of stormwater does not flow into the area storing the treatment volume ~~initial stormwater~~.

~~(32)~~(31) No change.

~~(33)~~(32) “Operating Agreement,” refers to the “Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between Northwest Florida Water Management District and Department of Environmental Protection,” incorporated by reference in Rule 62-346.091, F.A.C. A copy of the Operating Agreement is contained in Appendix A of Applicant’s Handbook Volume I ~~can be obtained by contacting a district or branch office of the Department or NFWFMD, or at the Internet sites of the Department at <http://www.dep.state.fl.us/water/wetlands/erp/rules/guide.htm>, or NFWFMD at <http://www.nwfwmd.state.fl.us/permits/ruleform.htm>~~.

~~(34)~~(33) No change.

~~(35)~~(34) “Permanent pool” means that portion of a wet detention pond that normally holds water (e.g., between the normal water level and the pond bottom), excluding any water volume claimed as wet detention treatment volume pursuant to Section 8.5 of the Applicant’s Handbook Volume II.

~~(36)~~(35) No change.

~~(37)~~(36) “Project area” means the area being modified or altered in conjunction with a proposed activity requiring a permit under this chapter, including all areas that are part of the surface water management system.

~~(38)~~(37) No change.

~~(39)~~(38) “Regional stormwater management system facility” 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 ~~accept and treat stormwater~~ from multiple parcels and projects within the drainage area served by the regional system facility, where the term “drainage area” refers to the land or development that is served by or contributes stormwater to the regional system facility.

~~(40)~~(39) No change.

~~(41)~~(40) “Registered Professional” means a professional registered or licensed by and in the State of Florida and who possesses with the necessary expertise and experience necessary for the competent preparation, submittal and certification of documents and materials, and performing other services required in support of permitting, constructing, altering, inspecting, and operating a proposed or existing activity regulated under Part IV of Chapter 373, F.S. in the fields of hydrology, hydrogeology, hydraulics, drainage, flood control, erosion and sediment control, and stormwater pollution control, and who is qualified by education and experience in the technical analyses, design, and application of required structures, processes, and systems, to design and certify the stormwater management systems under review. Examples of registered professionals, authorized pursuant to Chapter 455, F.S., and the respective practice acts by which they are regulated, are professional engineers licensed under Chapter 471, F.S., professional landscape architects licensed under Chapter 481, F.S., professional surveyors and mappers under Chapter 472, F.S., and professional geologists licensed under Chapter 492, F.S. ~~Registered professionals may sign and seal only those drawings, documents, and calculations commensurate with their skills, background, knowledge, education, and experience, and in accordance with their respective practice acts.~~

~~(42)~~(41) “Remove” or “removal” means ~~cessation of use and maintenance activities for a system, or part of a system, accompanied by~~ elimination of all or part of the system.

(42) through (43) renumber (43) through (44) No change.

~~(45)~~(44) “Routine custodial maintenance”— means those activities described in section 3.4.3.4(b) 3.4.2.5(b) in Applicant’s Handbook Volume I.

(45) through (47) renumber (46) through (48) No change.

~~(49)~~(48) “Sensitive Karst Areas” means those areas described in Section 17 and Appendix A of Applicant’s Handbook Volume II, where the Floridan aquifer is at or near the land surface.

~~(50)~~(49) No change.

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

~~(52)(50)~~ “Surface water management system” or “System” means a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, or any combination thereof. The terms “surface water management system” or “system” include areas of dredging or filling, as those terms are defined in Sections 373.403(13) and (14), F.S. However, until the effective date of the rules authorized by Section 373.4145(1)(b), F.S., the term “surface water management system” is limited to stormwater management systems.

(53) “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.

~~(51)~~ “Surface waters of the state” means those surface waters regulated pursuant to Rule 62-312.030, F.A.C.

~~(54)(52)~~ No change.

~~(55)(53)~~ “Threatened species” means those animal species listed in section 68A-27.004 (as amended May 15, 2008), F.A.C., and those plant species listed as “threatened” in 50 Code of Federal Regulations 17.12 (as amended April 8, 2004) when such plants are located in a wetland or other surface water.

~~(56)(53)~~ No change.

~~(57)(54)~~ “Traversing work” means any artificial structure or construction that is placed in or across a stream, or other flowing watercourse, ~~or an impoundment.~~

(55) through (57) renumber (58) through (60) No change.

~~(61)(58)~~ “Wetlands stormwater management system” means a stormwater management system that incorporates those wetlands described in Section 10.3 of the Applicant’s Handbook Volume II into the stormwater management system to provide stormwater treatment.

Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.414, 373.4145, 373.418, 373.421, 403.805(1) FS. Law Implemented 373.019, 373.117, 373.403, 373.413, 373.414, 373.4145, 373.416, 373.418, 373.421, 373.4211, 373.426, 403.0877, 403.813(1) FS. History — New 10-1-07, Amended _____.

62-346.040 Formal Determinations of the Landward Extent of Wetlands and Other Surface Waters.

Formal determinations of the landward extent of wetlands and other surface waters shall be performed in accordance with the procedures in Rule 62-343.040, F.A.C.

Rulemaking Specific Authority 373.026(7), 373.043, 373.4145, 373.421(2), 403.0877 FS. Law Implemented 373.4145, 373.421(2) FS. History — New 10-1-07, Amended _____.

62-346.050 Permits Required.

(1) An individual permit under this chapter must be obtained from the Department prior to the construction, alteration, operation, maintenance or repair (excluding routine custodial maintenance), abandonment, or removal of any surface water management system, unless the an activity:

(a) Qualifies for an exemption under Section 373.406 or 403.813(1), F.S., or Rule 62-346.051, F.A.C., or a noticed general permit under Chapter 62-341, F.A.C. an individual permit under this chapter must be obtained from the Department prior to the construction, alteration, operation, maintenance or repair (excluding routine custodial maintenance), abandonment, or removal of a stormwater management system. This includes all applications for conceptual approval permits. However, the establishment of a mitigation bank under Chapter 62-342, F.A.C., shall not require a permit under this chapter; Applications for individual permits will be reviewed and acted upon in accordance with subsection 62-346.090(2), F.A.C. or

(b) Meets the following thresholds and criteria and is not part of a larger common plan of development or ownership:

1. The system is not located in whole or in part in, on, or over wetlands or other surface waters;
2. The system consists of less than or equal to 4,000 square feet of impervious or semi-impervious surface area subject to vehicular traffic, such as roads, parking lots, driveways, and loading zones;
3. The system consists of less than or equal to 5,000 square feet of building area or other impervious area not subject to vehicular traffic;
4. The system has less than or equal to one acre total project area.
5. The system does not have a direct discharge into an Outstanding Florida Water, as listed in Rule 62-302.700, F.A.C.
6. The system does not cause any of the following:

a. Adverse water quantity impacts to receiving waters and adjacent lands;
b. Adverse flooding to on-site or off-site property;
c. Adverse impacts to existing surface water storage and conveyance capabilities;
d. A violation of the water quality standards set forth in Chapters 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including the provisions of Rules 62-4.243, 62-4.244, and 62-4.246, F.A.C., 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., 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.;

e. Adverse secondary or cumulative impacts to the water resources.

7. The new work, by itself, or in combination with a system that has come into existence since the effective date of this chapter, cannot cumulatively exceed any of the thresholds in subparagraphs 62-346.050(1)(b)1. through 5., F.A.C., or violate the criteria of subparagraph 62-346.050(1)(b)6., F.A.C.

(2) Notwithstanding the provisions of this section, an individual permit under this chapter 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 or other surface waters. Activities qualify for a noticed general permit if they meet the criteria in Chapter 62-341, F.A.C. Noticed general permits will be reviewed and acted upon in accordance with subsection 62-346.090(1), F.A.C.

(3) Applications for individual permits will be reviewed and acted upon in accordance with subsection 62-346.090(2), F.A.C. Noticed general permits will be reviewed and acted upon in accordance with subsection 62-346.090(1), F.A.C. In addition to any permits required under this chapter, dredging and filling in, on, or over surface waters of the state remain subject to the requirements of Chapter 62-312, F.A.C., including the need to obtain a separate permit under that chapter until the effective date of the rules adopted under Section 373.4145(1)(b), F.S.

(4) Permits for construction or alteration of activities regulated under this chapter must be converted to an operation and maintenance phase in accordance with Rule 62-346.095, F.A.C. Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.117, 373.118, 373.409, 373.413, 373.4132, 373.4145, 373.416, 373.426, 403.0877 FS. History — New 10-1-07, Amended _____.

62-346.051 Exemptions from Permitting.

(1) The activities set forth in this section do not require an environmental resource permit under this chapter or Chapter 62-341, F.A.C., as applicable, and may be conducted without notice to the Department, unless otherwise specifically provided herein or in Sections 373.406, 373.4145(3), or 403.813, F.S., or in Chapters 62-25 or 62-312, F.A.C. The performance of activities in accordance with the provisions of the exemptions set forth in this section does not relieve the person or persons who are using the exemption or who are constructing or otherwise implementing the activity from meeting the permitting, authorization, or performance requirements of other rules of the Department, the Board of Trustees, the water management districts, or other federal, state, or local governmental agencies. Any person proposing an activity under this section is also advised that such activity is subject to obtaining any required Works of the District permit pursuant to Chapter 40A-6, F.A.C. (March 2, 2000), if the work involves connection with, placement of structures in or across, or otherwise makes use of Works of the District.

(2) No change.

(3) Activities exempt under Section 373.406, F.S. Activities Below Threshold Criteria.

The construction, alteration, operation, and maintenance of a whole and complete project that meets all the thresholds in paragraphs (a) through (c), all the criteria in paragraph (d), and is not part of a larger common plan of development or sale:

(a) Less than or equal to 4,000 square feet of impervious or semi-impervious surface area subject to vehicular traffic, such as roads, parking lots, driveways, and loading zones;

(b) Less than or equal to 5,000 square feet of building area or other impervious area not subject to vehicular traffic;

(c) Less than or equal to one acre total project area; and

(d) Such project also must meet all of the following criteria:

1. There is no direct discharge into Outstanding Florida Waters, as listed in Rule 62-302.700, F.A.C. A discharge is not direct if it enters another water body or is located outside of the boundary of the Outstanding Florida Water, provided that, in either case, there is sufficient mixing to prevent a lowering of the existing ambient water quality in the Outstanding Florida Water.

2. Will not cause adverse water quantity impacts to receiving waters and adjacent lands;

3. Will not cause adverse flooding to on-site or off-site property;

~~4. Will not cause adverse impacts to existing surface water storage and conveyance capabilities;~~

~~5. Will not cause a violation of the water quality standards set forth in Chapters 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including the provisions of Rules 62-4.243, 62-4.244, and 62-4.246, F.A.C., 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., 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.; and~~

~~6. Will not cause adverse secondary impacts to the water resources. Until the effective date of rules required under Section 373.4145(1)(b), F.S., this shall be limited to not causing a violation of water quality standards and not lowering or raising seasonal water levels in adjacent surface waters of the state to an extent that prevents the stormwater management system from functioning as designed, not adversely altering normal water level fluctuations in adjacent surface waters of the state, and not otherwise adversely impacting the maintenance of surface or ground water levels, or surface water flows established pursuant to Section 373.042, F.S.~~

~~Notwithstanding the above provisions of this subsection, 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 surface waters of the state.~~

~~(4) Bridges, Driveways, and Roadways.~~

~~(a) No change.~~

~~(b) The construction or maintenance of culverted driveway or roadway crossings and bridges of wholly artificial, non-navigable drainage conveyances, provided that:~~

~~1. through 9. No change.~~

~~10. The person performing the exempt activity must implement measures for erosion and pollution control using best management practices, including turbidity curtains or similar devices and other site specific practices, in strict adherence to "The Florida Stormwater, Erosion, and Sediment Control Inspector's Manual" (Florida Department of Environmental Protection and Florida Department of Transportation, Sixth Impression, April 2006), "State of Florida Erosion and Sediment Control Designer and Reviewer Manual" (HydroDynamics Incorporated in cooperation with Stormwater Management Academy, June 2007), the Florida Department of Transportation's "Standard Specifications for Road and Bridge Construction, (2007)" and Chapter 6 of "The Florida Development Manual: A Guide to Sound Land and Water Management (Department of Environmental Regulation, June 1988),"²² to prevent violations of state water quality standards. Temporary erosion control measures must be implemented prior to and during construction, and permanent erosion control measures for all exposed soils must be completed within seven calendar days of the most recent construction activity;~~

~~11. through 14. No change.~~

~~(c) The construction of the following minor roadway safety projects, provided that the capacity of existing swales, ditches or other stormwater management systems is not reduced, the projects are not located in wetlands or other surface waters, and the projects include best management practices during construction to prevent secondary impacts in adjacent wetlands or other surface waters due to erosion and sedimentation:~~

~~1. through 2. No change.~~

~~3. Road widening and shoulder paving projects which do not result in the creation of additional traffic lanes; or~~

~~4. No change.~~

~~(d) No change.~~

In accordance with Section 373.4145(3)(e), F.S., the adoption of the noticed general permit in Rule 62-341.448, F.A.C., does not supersede this exemption.

(5) Docking, Pier, and Boat Ramp Facilities — Construction, Replacement or Repair.

(a) The construction, replacement or repair of pilings and dolphins associated with private docking facilities or piers, and the installation and repair of private docks, piers, and recreational docking facilities, or piers and recreational docking facilities of local governmental entities in accordance with Section 403.813(1)(b), F.S. This exemption shall include the construction and repair of structures on the dock, such as gazebos, or adjacent to the dock, such as boat shelters, provided such structures are not enclosed with walls and doors, are not used for residential or commercial purposes, or storage of materials other than those associated with water dependent recreational use, and provided the structures, including any roof area extending outside the footprint of the dock, does not exceed, together with the docking facility, the limitations specified in Section 403.813(1)(b), F.S. Any dock and associated structure shall be the sole dock constructed pursuant to this exemption as measured along the shoreline for a minimum distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot. For the purposes of this exemption, multi-family living complexes and other types of complexes or facilities associated with

the proposed private dock shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property.

(b) through (c) No change.

(d) The construction and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists, or the construction and maintenance to design specifications of boat ramps open to the public in any wetlands or other surface waters where navigational access to the proposed ramp exists in accordance with Section 403.813(1)(c), F.S. Except as otherwise provided in this subsection, the installation of docks that are associated with and adjoining boat ramps constructed pursuant to this exemption shall be limited to an area of 500 square feet or less over wetlands and other surface waters ~~of the state~~. For the purpose of this exemption, artificial bodies of water shall include residential canal systems, canals permitted by a water management district created under Section 373.069, F.S., and artificially created portions of the Florida Intracoastal Waterway.

(e) No change.

(6) No change.

(7) Maintenance and Restoration of Systems.

(a) Maintenance activities in accordance with Sections 403.813(1)(f) and (g), F.S., including the notification requirements of Section 403.813(1)(f), F.S. The Department's interpretation and implementation of these exemptions is explained in section ~~3.4.3.5~~ ~~3.4.2.6~~ of the Applicant's Handbook Volume I.

(b) through (e) No change.

(8) Mosquito Control Activities, Surface Waters or Wetlands Created by — Construction, alteration, operation, maintenance, removal, and abandonment of surface water ~~stormwater~~ management systems, dams, impoundments, reservoirs, appurtenant works, or works in, on, or over lands that have become surface waters or wetlands solely because of mosquito control activities, in accordance with the provisions in Rule 62-340.750, F.A.C.

(9) through (12) No change.

(13) The construction, alteration, maintenance, removal or abandonment of recreational paths that:

(a) Are not located within wetlands or other surface waters ~~of the state~~;

(b) Include best management practices during construction to prevent secondary impacts in adjacent wetlands and ~~or~~ other surface waters due to erosion and sedimentation;

(c) Have a width of eight feet or less for unidirectional paths, and 12 feet or less for bidirectional paths; and

(d) No change.

(14) Seawall and Riprap Shore Stabilization — Construction, Restoration and Repair.

(a) No change.

(b) The restoration of a functional seawall or riprap in accordance with Section 403.813(1)(e), F.S., and the restoration of a seawall or rip rap that has been rendered non-functional by a discrete event, such as a storm, flood, accident, or fire. Such restoration shall be at or upland of its previous location, or within 18 inches waterward of its previous location, as measured from the face of the existing seawall slab to the face of the restored seawall slab, or from the front slope of the existing riprap to the front slope of the restored riprap. No filling can be performed except in the actual restoration of the seawall or riprap. This shall not be construed to authorize reclamation of land ~~No construction shall be undertaken without necessary title or leasehold interest, especially~~ where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction and natural erosion. ~~This exemption shall be limited to functioning seawalls or riprap.~~ This exemption shall not affect the permitting requirements of Chapter 161, F.S.

(c) through (d) No change.

(15) Single-Family Residences and Associated Residential Improvements.

(a) The construction or private use of a single-family dwelling unit, duplex, triplex, or quadruplex that is not part of a larger common plan of development or sale proposed by the applicant and does not involve wetlands and ~~or~~ other surface waters in accordance with Section 373.4145(3)(c), F.S.;

(b) Stormwater management systems ~~facilities~~ designed to serve single-family residential projects conducted in conformance with Section 403.813(1)(q), F.S.

(16) Utilities.

(a) through (f) No change.

(g) Construction, alteration, maintenance, removal, or abandonment of electrical distribution substation sites with one acre or less of impervious or semi-impervious surface such as access roads, buildings, and equipment pads. The design of above-grade access roads shall not adversely affect the conveyance of surface water flows. The site must be surrounded by swales, as defined in Section 403.803(14), F.S., or other type of equivalent treatment, and

must not have a direct discharge to an Outstanding Florida Water. No activities associated with the substation, including access to the site, may be located in wetlands or other surface waters, or within a 100-year floodplain.

(h) Temporary trenches dug by hand or with equipment that create a trench less than two feet wide to install utilities such as communication cables, water lines, and electrical lines, provided such activities:

1. Are not located within wetlands or other surface waters of the state;

2. through 3. No change.

4. Utilize and maintain erosion and soil stabilization controls in accordance with Part IV of ~~the~~ Applicant's Handbook Volume I; and

5. No change.

~~(17) Activities exempt under Section 373.406, F.S.~~

~~(17)(18) Alteration of a wholly owned, artificial surface water created entirely from uplands that does not connect to wetlands or other surface waters of the state, except for those created for the purpose of providing mitigation under Part IV of Chapter 373, F.S., and except where permitted under Chapter 62-25, F.A.C., or this chapter. However, this exemption shall not be applicable until the effective date of the rules adopted under Section 373.4145(1)(b), F.S.~~

(18) Modification or reconstruction by a city, county, state agency, or water management district, of an existing conveyance system that has not been previously permitted, provided that it is not intended to serve new development, does not have a direct discharge to an Outstanding Florida Water, will not increase pollution loading or change points of discharge in a manner that would adversely affect the designated uses of wetlands or other surface waters, or will not result in new adverse water quantity impacts to receiving waters and adjacent lands. This exemption shall not apply to activities that:

(a) Propose to pipe and fill wetlands and other surface waters, including irrigation or drainage ditches;

(b) Propose to replace a functional treatment swale that was authorized under Chapters 62-25 or 62-346, F.A.C., or

(c) Propose construction exceeding the thresholds and criteria of subsection 62-346.050(1)(b), F.A.C.

Rulemaking Specific Authority 373.026(7), 373.043, 373.4145, 403.805(1) FS. Law Implemented 373.406, 373.4145, 403.813(2) FS. History— New 10-1-07, Amended _____.

62-346.060 Conceptual Approval Permits.

(1) A conceptual approval permit is a type of individual permit that is binding to the extent of the activity specified in the permit and subject to the limitations in this section. Issuance of a conceptual approval permit is a determination that the conceptual plans are, within the extent of detail provided in the conceptual approval permit application, consistent with applicable rules at the time of issuance. A conceptual approval permit provides the conceptual approval permit holder with assurance, during the duration of the conceptual approval permit, that the engineering and environmental concepts upon which the designs of the conceptual approval permit are based are (in concept, and within the extent of detail provided in the conceptual approval permit) likely to meet applicable rule criteria for issuance of permits for subsequent phases of the project, provided:

(a) There are no changes in the rules governing the conditions of issuance of permits for future phases of the project and the conceptual approval permit is not inconsistent with any Total Maximum Daily Load or Basin Management Action Plan adopted for the waterbody into which the system discharges or is located pursuant to Section 403.067(7), F.S., and Chapter 62-304, F.A.C.; and

(b) No change.

(2) through (4) No change.

~~(5) Applications for conceptual approval permits may be submitted and shall be reviewed by the Department only after the effective date of the rules adopted under Section 373.4145(1)(b), F.S.~~

Rulemaking Specific Authority 373.026, 373.043, 373.044, 373.4145, 373.418, 380.06, 403.805(1) FS. Law Implemented 373.026, 373.409, 373.413, 373.4141, 373.4142, 373.4145, 373.416, 380.06 FS. History — New 10-1-07, Amended _____.

62-346.070 Procedures to Prepare Applications and Notices for Permits, Water Quality Certification, Coastal Zone Consistency Concurrence, and to Request Verification of Qualification for an Exemption.

(1) No change.

(2) Applications and notices shall be prepared as follows:

(a) Applications for individual permits shall be made on Form 62-346.900(1), "Joint Application for Environmental Resource Stormwater Permit / Authorization to Use State-Owned Submerged Lands / Federal Dredge and Fill in Northwest Florida," incorporated by reference herein.

1. Applications to the Department for individual permits must contain one original of the completed application with original signatures on Section 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; plans and drawings, calculations, environmental information, and other details requested in the application Section B that depict and describe the design, nature, scope, limits, intent, and functioning of the proposed activities; one paper copy of all the above; and the fee as required by Rule 62-346.071, F.A.C.

2. Applications to the NFWFMD for individual permits can be submitted through the NFWFMD Internet site at <http://www.nwfwmd.state.fl.us/permits/permits-ERP.html> using the NFWFMD e-permitting on-line portal. The application must include as attachments: 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; plans and drawings, calculations, environmental information, and other details requested in Section B that depict and describe the design, nature, scope, limits, intent, and functioning of the proposed activities; and the fee as required by Rule 62-346.071, F.A.C. If the applicant does not utilize the electronic application, paper copies shall be submitted by mail or other delivery service to the appropriate office of the NFWFMD. If a paper application is submitted, it must include all requirements of subparagraph ~~62-346.070(2)(a)1~~, F.A.C., above, as for the Department.

(b) A notice of intent to use a noticed general permit under Chapter 62-341, F.A.C., shall be made at least 30 days prior to initiating the activities, or by such other time as specified in the noticed general permit by submitting a completed Form 62-346.900(2), "Notice of Intent to Use Conduct an Environmental Resource Noticed General Permit in Northwest Florida," incorporated by reference herein.

1. No change.

2. The notice to the NFWFMD can be submitted through the NFWFMD Internet site at <http://www.nwfwmd.state.fl.us/permits/permits-ERP.html> using the NFWFMD e-permitting on-line portal. The notice must include as attachments: 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; plans and drawings, calculations, environmental information, and other details required in the noticed general permit that depict and describe the design, nature, scope, limits, intent, and functioning of the proposed activities; and the fee as required by Rule 62-346.071, F.A.C. If the applicant does not utilize an electronic permit application, paper copies shall be submitted by mail or other delivery service to the appropriate office of the NFWFMD. If a paper application is submitted, it must include all requirements of subparagraph ~~62-346.070(2)(b)1~~, F.A.C., above, as for the Department.

(c) ~~Verification of exemptions may be requested as provided below:~~

~~1. Requests Applications to the Department for verification of an exemptions under this chapter for stormwater systems that do not involve any work in, on, or over surface waters of the state must shall be made either electronically via the Internet site of the Department, or by submitting Form 62-346.900(11) — "Request for Verification of an Exemption," which is hereby adopted and incorporated by reference, or by submitting an alternative written request such as by letter or e-mail. Exemption verification requests to the NFWFMD can be submitted through their Internet site. an "Application for Stormwater Permit in Northwest Florida" in accordance with paragraph 62-346.070(2)(a), F.A.C., or by letter. Applications for verification of any exemption that involves work in, on, or over waters of the state shall be made either on Form 62-312.900(1), "Joint Application for Works in the Waters of Florida," incorporated by reference herein, or by letter. All requests for verification of an exemption The application or letter must contain 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; the fee required by Rule 62-346.071, F.A.C., two sets of plans and drawings, calculations, environmental information, and other supporting documents that clearly and legibly depict and describe the proposed activities in detail sufficient to demonstrate compliance with the terms, conditions, and limitations of the exemption; and identification (by number or description) to the rule or statutory exemption sought. If the request is by letter or e-mail, it must also include or be followed up within 10 days of submittal of the request with an original authorization signed by the property owner that authorizes Department staff to inspect the property for qualification for the exemption. In the case of e-mail requests, the fee required above must also be received by the Department within 10 days of submittal of the request. Self-certification of a private, single-family dock to the Department is available through the Department's Internet site at: <http://approd.dep.state.fl.us/erppa/>.~~

2. —Applications to the NFWFMD for verification of exemption under this chapter can be submitted through the NFWFMD Internet site at <http://www.nwfwmd.state.fl.us/permits/permits-ERP.html>. If the applicant does not utilize the electronic self certification on the NFWFMD Internet site, then a verification of exemption may be obtained from the NFWFMD by providing the following for review: 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; and plans and

~~drawings, calculations, environmental information, and other supporting documents sufficient to depict and describe the proposed activities. The NWFWMDC will advise in writing whether the activity is exempt.~~

(3)(a) An application for a permit must include a certification by the applicant that they have a sufficient real property interest in or control over the land upon which the activities subject to the application will be conducted. Interests in real property are typically evidenced by an instrument such as a warranty deed, lease [subject to the provisions of paragraph (3)(b), below], easement, option agreement, judgment of the court, certificate of title issued by a clerk of the court, or condominium/homeowner's association documents that show that the person or entity has sufficient interest in or control over the property to authorize the activities to be permitted. An entity's contract for sale and purchase shall not be considered to have sufficient real property interest or control over the land that is subject to the application, but such entity shall be allowed to submit an application under this chapter, subject to the provisions of paragraph (3)(c), below. Entities with the power of eminent domain and condemnation authority shall be considered capable of demonstrating that they will have sufficient real property interest or control prior to construction, and do not have to provide the information required in paragraph (3)(d)2., below, but must comply with (3)(d)1., below, and shall be required to make provisions to enable staff of the Department to enter onto, inspect, and conduct sampling on the lands that are subject to the application. 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. (April 14, 2008). Such applicants 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 activities.

(b) When the real property interest is a lease, applicants must provide reasonable assurance that the system will be constructed or altered, and will be operated and maintained in accordance with the permit for the expected life of the system through such means as:

1. Having the fee simple owner included as a co-applicant to the application;
2. Including a written agreement with a governmental entity that provides for the governmental entity to accept transfer and conversion of the permit to the operation and maintenance phase, including completing construction as authorized by the permit, if needed;
3. Having the lease-hold interest over the land and system extending for the expected life of the system; or
4. Having the lease provide that operation and maintenance of the system is to be transferred to a new lessee or the landowner upon revocation, termination, or expiration of the lease.

In all cases, the lease must provide a contingency designating an entity responsible for completing construction of the system in the event construction is not or cannot be completed by the lessee, and an entity responsible for operation and maintenance of the system. If the lease does not so provide, a separate binding document will be required that establishes the landowner or other entity with sufficient financial capability and legal authority and capability to be responsible for completing construction or alteration of the system and for operating and maintaining the system in accordance with the permit.

(c) Where control is demonstrated by a sale and purchase agreement, the permit will be conditioned to prohibit construction and operation until ownership is transferred to the permittee, and to expire if ownership of the property that is subject to the application is not transferred to permittee, unless the permit is transferred to the owner or another entity with sufficient real property interest or control in the land that is subject to the application.

(d) When the applicant does not have sufficient real property interest in or control over the land as provided in paragraph (3)(a), above, the application must include:

1. Written documentation that the fee simple owner, easement holder, governmental entity, or other entity as provided for in section 12.3 of Applicant's Handbook Volume I agrees to operate and maintain the system after completion of authorized construction, and will complete any construction and perform other measures as required by the permit in the event the work is not completed by the permittee or the permittee fails to bring the system into conformance with the terms and conditions of the permit; and

2. Written authorization from the owner or easement holder for staff of the Department or NWFWMDC 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 enter onto, inspect, and conduct sampling of the site in a manner that prevents trespass access and conduct necessary site visits for the review, inspection, and sampling of the lands and waters on the property that are the subject of the application.

(4)(3) No change.

(5)(4) For individual permits issued pursuant to this chapter, a completed application shall also constitute an application for certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 U.S.C. Section 1341. Similarly, an application for water quality certification shall constitute an application for a noticed general or individual (including conceptual approval) environmental resource

permit. Issuance of the permit shall constitute certification of compliance with state water quality standards, unless the permit specifically states otherwise. A noticed general permit under Chapter 62-341, F.A.C., also constitutes water quality certification for the activity described in the general permit when the activity is performed according to all applicable rules of the Department and all general and specific conditions of the general permit. Water quality certification is waived for applications that qualify as an exemption under Chapter 373 or 403, F.S., or this chapter. For individual permits issued pursuant to this chapter to federal agencies, a completed application shall also constitute a request for determination of concurrence under Florida's Coastal Zone Management Program as provided in Section 307 of the Coastal Zone Management Act and 15 CFR 930, Subpart D.

(6) For activities regulated under Part IV of Chapter 373, F.S., that are located in or seaward of coastal counties, and that include work in, on or over wetlands or other surface waters, as delineated by the methodology ratified pursuant to Section 373.4211, F.S., a complete application for an individual (including conceptual approval) environmental resource permit, or submittal of a notice to use a general permit under Chapter 62-341, F.A.C., shall also constitute a request for the State's concurrence that the project is consistent with the Florida Coastal Management Program (FCMP). Issuance of an individual or noticed general environmental resource permit shall constitute the state's concurrence that the activity is consistent with the FCMP in accordance with the requirements of Section 380.23, F.S. Denial of an individual permit, or final agency action that the activity does not qualify for a noticed general environmental resource permit shall constitute the state's determination that the activity is inconsistent with the FCMP. Activities that are exempt under Part IV of Chapter 373, F.S., or Chapter 403, F.S., are not subject to review by the Department for consistency with the FCMP; however, a request to verify qualification to use an exemption may be subject to consistency review by other agencies with statutory authorities in the FCMP.

(7)(5) For paper applications submitted to the Department or NFWFMD, all copies of the plans and drawings, together with supporting calculations and documentation submitted to the Department must be signed, sealed, and dated by a registered professional, as required by Chapters 471, 472, 481 or 492, F.S., as applicable, when the design of the system requires the services of a registered professional for paper applications submitted to the Department or NFWFMD. Materials submitted in support of For electronic applications submitted submissions to the NFWFMD by registered professionals must be electronically certified as allowed by their rules, an electronic signature file must be submitted that shall serve the same purpose as individual signing or sealing of paper applications, plans, and supporting documents.

(8)(6) No change.

(9) A separate mangrove alteration or trimming permit under Sections 403.9321 through .9333, F.S., shall not be required where the mangrove trimming or alteration is authorized and conducted as part of and in conformance with a noticed general or individual environmental resource permit, or when necessary to construct activities conducted in conformance with an exemption authorized under Part IV of Chapter 373, F.S., or under Chapter 62-346.051, F.A.C.

Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.4145, 373.418, 403.0877, 403.805(1) FS. Law Implemented 373.026(7), 373.109, 373.117, 373.118, 373.413, 373.4141, 373.4145, 373.416, 373.426, 373.428, 403.0877 FS. History — New 01-1-07, Amended _____.

62-346.071 Fees.

(1) The fee required for the type of permit as provided in this chapter is as follows. The highest fee shall apply whenever an activity meets the criteria for more than one fee category. For purposes of determining the applicable fee, the size of the area of any proposed mitigation shall not be considered as part of the project area.

(a) Individual (including conceptual approval) permits, including conceptual approval permits other than for a mitigation bank, that involves the following amount of dredging, filling, construction, or alteration in, on or over wetlands and other surface waters—the highest fee shall apply whenever an activity meets the criteria for more than one fee category in subparagraph (1)(a)1. through (1)(l) 3, below:

<u>1. Greater than or equal to 100 acres</u>	<u>\$14,020</u>
<u>2. Less than 100 acres and greater than or equal to 50 acres</u>	<u>\$11,220</u>
<u>3. Less than 50 acres and greater than or equal to 10 acres</u>	<u>\$9,120</u>
<u>4. Less than 10 acres and greater than or equal to 5 acres</u>	<u>\$7,710</u>
<u>5. Less than 5 acres and greater than or equal to 2 acres</u>	<u>\$5,610</u>
<u>6. Less than 2 acres and greater than or equal to 1 acre</u>	<u>\$4,210</u>
<u>7. Less than 1 acre</u>	<u>\$710</u>
<u>8. New boat slips:</u>	
<u>a. 50 or more</u>	<u>\$5,610</u>

b. <u>30 to 49</u>	<u>\$4,210</u>
c. <u>10 to 29</u>	<u>\$2,110</u>
d. <u>3 to 9</u>	<u>\$850</u>
e. <u>1 to 2</u>	<u>\$500</u>
9. <u>Deadhead logging</u>	<u>\$500</u>
<u>(b) Individual (including conceptual approval) permits for stormwater management systems (not for other surface water management systems such as mitigation banks, new boat slips, or construction or alteration in, on, over wetlands and other surface waters):</u>	
1. <u>Having a A project area of greater than or equal to 100 acres, or that is capable of impounding greater than or equal to 120 acre-feet of water</u>	\$3,510
2. <u>Serving a A project area less than 100 acres but greater than or equal to 40 acres, or that is capable of impounding less than 120 but more than 40 acre-feet of water, or that provides for the placement of 12 or more acres of impervious surface that also constitutes more than 40 percent of the total land area</u>	\$1,340
3. <u>Serving a A project that does not exceed any of the thresholds in 1 or 2, above</u>	\$310
<u>(c)4. Retrofits of existing surface water management systems, in accordance with section 2.10, Applicant's Handbook Volume II</u>	\$310
<u>(d) Individual (including conceptual approval) permits solely for environmental restoration or enhancement activities, provided such activities are not associated with a mitigation bank and are not being implemented as mitigation for other activities that require a permit under Part IV of Chapter 373, F.S. For the purposes of this provision, the term "environmental restoration or enhancement" means an action or actions designed and implemented solely to convert degraded or altered uplands, wetlands, or other surface waters to intact communities typical of those historically present, or an action or actions that are designed and implemented solely to improve the quality and condition of currently degraded wetlands or other surface waters to a more healthy, functional, and sustaining condition for fish, wildlife, and listed species</u>	<u>\$250</u>
<u>(e)5- For a system involving Activities requiring an individual permit involving the following types of Class I solid waste disposal facilities, as defined in subsection 62-701.340(3), F.A.C.:</u>	
<u>1.a. New Class I solid waste disposal facility</u>	\$10,520
<u>2.b. Major modification of an existing Class I solid waste disposal facility</u>	\$11,920
<u>(f) Mitigation Banks</u>	
<u>1. Mitigation Bank Permit, other than Conceptual Approval</u>	<u>\$6,050</u>
<u>2. Credit Release (credit available for sale)</u>	<u>\$330</u>
<u>3. Credit Withdrawal (actual use of credit)</u>	<u>\$0</u>
<u>4. Mitigation Bank Conceptual Approval Permit</u>	<u>\$6,050</u>
<u>5. Major modifications involving changes to one or more of the following components: service area; credit assessment; success or release criteria; hydrologic structures or alterations; construction or mitigation design that does not increase the project area; elimination of lands; or monitoring or management plans:</u>	
<u>a. Affecting one of the above components</u>	<u>\$1,340</u>
<u>b. Affecting two of the above components</u>	<u>\$2,680</u>
<u>c. Affecting three of the above components</u>	<u>\$4,020</u>
<u>(g)(b) Major modifications (see Rule 62-346.100, F.A.C.), including to mitigation bank permits under Chapter 62-342, F.A.C., that increase the project area or involve four or more of the components listed in 62-4.050(4)(h)3.e., F.A.C., except those involving Class I solid waste disposal facilities, as defined in subsection 62-701.340(3), F.A.C., or as otherwise specified above.</u>	Same fee as a new application for the activity
<u>(h)(e) Minor modifications where the modification will not require substantial technical evaluation by the Department, will not lead to substantially different environmental impacts or will lessen the impacts of the original permit, and as further defined in (see Rule 62-346.100, F.A.C.):</u>	
1. <u>To correct minor errors or typographical mistakes or to incorporate changes requested by the Department or required through permits issued by other regulatory agencies, and to change due dates for reporting or performance deadlines when such</u>	\$ 0

changes in the due date do not involve any new work, any new work locations, or any new activities, and will not alter, replace, or otherwise eliminate the requirements for otherwise performing the work required by the permit ~~Minor modifications in accordance with paragraph 62-346.100(1)(d), F.A.C.~~

- 2. No change.
- 3. That consist of a transfer of an individual permit, or a time extension \$80
- 4. That consist of minor technical changes, minor adjustments to work locations, materials, dimensions or configurations, or elimination of work authorized by the permit when the original permit fee of the issued permit is less than \$300 \$250
- 5. That consist of minor technical changes, minor adjustments to work locations, materials, dimensions or configurations, or elimination of work authorized by the permit when the original permit fee of the issued permit is more than or equal to \$300 \$420
- 6. ~~4.~~ For minor modifications of Individual or Conceptual Approval Permits for Class I solid waste disposal facilities \$2,110
 - (i) Individual permits to construct and operate systems for which a conceptual approval permit has been obtained:
 - 1. First phase of a system, if the construction and operation permit is submitted concurrently with the application for the conceptual approval permit, and construction is proposed to commence within two years of issuance of the conceptual approval permit \$0
 - 2. First or any subsequent phase of a system, if not requested concurrently with the application for the conceptual approval permit The fee as established in subsection 62-346.071(1), F.A.C.
- (j) ~~(d)~~ Verification of qualification to use a Noticed General Permit, except:
 - a. ~~1.~~ Paving of existing municipally-owned roads under Rule 62-312.824 or 62-341.448, F.A.C. \$250
 - b. ~~2.~~ Environmental enhancement and restoration activities conducted by the U.S. Army Corps of Engineers under Rule 62-341.486, F.A.C. \$0
- (k) ~~(e)~~ Variances and waivers:
 - 1. Under Section 120.542, F.S. \$0
 - 2. Under Section 373.414(17), F.S.:
 - a. Of the prohibition of work in waters approved for shellfish harvesting \$170
 - b. Of all other types of variances \$830
- (l) ~~(f)~~ Verification that an activity is exempt from regulation under Section 373.406 or 403.813(1), F.S., or Rule 62-346.051, F.A.C., other than self-certification for which no fee will apply Part IV of Chapter 373, F.S. \$100

(2) through (6) No change.

~~Rulemaking Specific~~ Authority 373.026(7), 373.043, 373.109, 373.4145, 373.418, 403.805(1) FS. Law Implemented 218.075, 373.109, 373.4145, 373.418, 373.421 FS. History — New 10-1-07, Amended 4-21-09,_____.

62-346.075 Additional Requirements and Procedures for Concurrent Review of Related Applications.

(1) A single application shall be submitted to the Department and reviewed for activities that require an individual environmental resource permit under Part IV of Chapter 373, F.S., and a proprietary authorization under Chapters 253 or 258, F.S., to use sovereign submerged lands. In such cases, the application shall not be deemed complete, and the timeframes for approval or denial shall not commence, until all information required by applicable provisions of Part IV of Chapter 373, F.S., and proprietary authorization under Chapters 253 or 258, F.S., and rules adopted thereunder for both the environmental resource permit and the proprietary authorization is received.

(2) No application under this section shall be approved until all the requirements of applicable provisions of Part IV of Chapter 373, F.S., and proprietary authorization under Chapters 253 or 258, F.S., and rules adopted thereunder for both the individual environmental resource permit and the proprietary authorization are met. The approval shall be subject to all conditions of the regulatory permit and proprietary authorization, and any additional conditions imposed by such statutes or rules.

(3) For an application reviewed under this section for which a request for proprietary authorization to use sovereign submerged lands has been delegated to the Department to take final action without action by the Board of Trustees of the Internal Improvement Trust Fund, the Department or water management district shall issue a

consolidated notice of intent to issue or deny the environmental resource permit and the proprietary authorization within 90 days of receiving a complete application under this section. Waiving or tolling the timeframes for final action on the application under this section shall constitute a waiver or tolling of the timeframes for final action on the environmental resource permit application.

(4) For an application reviewed under this section for which the request for proprietary authorization to use sovereign submerged lands has not been delegated to the Department to take final action without action by the Board of Trustees of the Internal Improvement Trust Fund, the application shall be reviewed and final agency action taken in accordance with the procedures in Paragraphs 373.427(2)(a) through (c), F.S. The recommended consolidated intent, as required in Paragraph 373.427(2)(a), F.S., shall be considered issued when the Department submits it for publication on the Board of Trustees' agenda, and releases it to the applicant and to any person to whom notice is required under section 62-346.090, F.A.C.

(5) The issuance of the consolidated notice of intent to issue or deny, or upon issuance of the recommended consolidated notice of intent to issue or deny pursuant to subsection (4), the Department shall be deemed to be in compliance with the timeframes for approval or denial in Section 120.60(1), F.S. Failure to satisfy these timeframes shall not result in approval by default of the application to use sovereign submerged lands. Also, if an administrative proceeding under Section 120.57, F.S., is properly requested on both the environmental resource permit and the proprietary authorization under this section, the review shall be conducted as a single consolidated administrative proceeding. If an administrative proceeding under Section 120.57, F.S., is properly requested on either the environmental resource permit or the proprietary authorization under this section, final agency action shall not be taken on either authorization until the administrative proceeding is concluded.

(6) Appellate review of any consolidated order under this section is governed by the provisions of Section 373.4275, F.S.

(7) For an activity requiring an individual permit under Section 161.041, F.S., and an individual environmental resource permit under Part IV of Chapter 373, F.S., a joint coastal permit shall be required, as provided in Chapter 62B-49, F.A.C., in place of the above noted permits.

(8) This section shall be applicable to all applications for individual environmental resource permits under Part IV of Chapter 373, F.S., and proprietary authorizations under Chapters 253 or 258, F.S., to use sovereign submerged lands, that are received by the Department after [effective date]. If an applicant requests that its applications for individual environmental resource permit under Part IV of Chapter 373, F.S., and proprietary authorizations under Chapters 253 or 258, F.S., to use sovereign submerged lands, received prior to [effective date], be processed under this rule section, such request shall be granted if the applications for both are incomplete as of [effective date].

(9) Nothing in this section shall be construed to limit an applicant's ability to make separate applications for stages, phases, or portions of a project separate from an activity requiring both a proprietary authorization under Chapters 253 or 258, F.S., and an individual environmental resource permit under Part IV of Chapter 373, F.S. Rulemaking Authority 161.055, 253.03(7), 253.77, 258.43, 373.026, 373.043, 373.044, 373.418, 373.427, 403.805(1), FS. Law Implemented 120.60, 161.041, 161.055, 253.03, 253.77, 258.42, 258.43, 373.026, 373.413, 373.416, 373.427, 373.4275 FS. History — New

62-346.080 Submittal of Applications and Notices for Permits and Petitions for Formal Determinations to Department and NFWFMD Offices.

(1) No change.

(2) All applications and notices for environmental resource permits, variances, and other authorizations required under this chapter that are the responsibility of the Department under the Operating Agreement, except for activities as specified in paragraphs (a) through (d) and subsection (5) below, shall be submitted to the district or branch office of the Department that has geographical jurisdiction over the location where the activity is to occur, as described in section 1.2 of Applicant's Handbook Volume I, Figure 1A of the "Application for Stormwater Permit in Northwest Florida." For purposes of this subsection, the term "Department" does not include the NFWFMD. At this time, the Department does not accept applications for permits submitted electronically, although such electronically-prepared applications may accompany the paper copies required in Rule 62-346.070, F.A.C. The following activities shall be submitted to the Department office specified below:

(a) Mines, which shall be submitted to the Bureau of Mining and Mineral Regulation at the address in section 1.3 of Applicant's Handbook Volume I;

(b) Coastal construction, as defined in Section 161.021(6), F.S., involving projects, as defined in Section 161.041, F.S., shall be submitted to the Bureau of Beaches and Coastal Systems (BBCS) at the address in section 1.3 of Applicant's Handbook Volume I, as a Joint Coastal Permit application. Projects located waterward of the Coastal Construction Control Line (CCCL) but landward of mean high water shall be processed by the district office of the

Department. Any concurrently-required CCCL permit under Chapter 161, F.S., for such project shall be processed by the BBCS:

(c) Federal dredging projects in marine waters, which shall be submitted to the BBCS at the address in section 1.3 of Applicant's Handbook Volume I;

(d) Dredging of channels, turning basins, or berths within a deepwater port listed in Section 403.021(9)(b), F.S., which shall be submitted to the BBCS at the address in section 1.3 of Applicant's Handbook Volume I. Other port activities, such as bulkheads, docks, or upland development, shall be submitted to the district office of the Department having geographical jurisdiction over the location where the activity is to occur.

(3) All applications and notices for environmental resource permits, petitions for variances, and other authorizations required under this chapter that are the responsibility of the NFWFMD under the Operating Agreement can be submitted to the NFWFMD Internet site at <http://www.nfwfmd.state.fl.us/permits/permits-ERP.html>. If submitting paper copies, submit to the office of the NFWFMD ~~that has geographical jurisdiction over the location where the activity is to occur~~, as described in Figure 1B of Form 62-346.900(1). Additional details for submitting applications and notices to the NFWFMD are contained in Rule 62-346.070, F.A.C.

(4) No change.

(5) Unless otherwise provided by law, a proposed activity subject to the permit requirements of this chapter, Chapter 62-330, or 62-341, F.A.C., a portion of which extends beyond the boundary of the Suwannee River Water Management District (SRWMD), will be analyzed based on criteria 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 operating agreement in effect between the agencies to determine whether the application for the activity would be most appropriately be reviewed and acted on by the NFWFMD, the SRWMD, or the Department. In the case of activities that extend into the area of the ~~SRWMD Suwannee River Water Management~~ that are the responsibility of the Department, the Director of District Management of the Department district office processing the application shall have the authority to take the final agency action on the entire application. However, if the applicant prefers, a separate application may be submitted to each district or branch office of the Department that has responsibility for activities within the geographical limits where the activity is located. In such case, the applications shall be individually reviewed and processed separately by the applicable Department district or branch office.
Rulemaking Specific Authority 373.026, 373.043, 373.044, 373.118, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.026, 373.118, 373.413, 373.4145, 373.416, 373.426 FS. History — New 10-1-07, Amended _____.

62-346.090 Processing of Notices and Applications.

(1) Noticed General Permits.

(a) through (d) No change.

(e) The Department shall notify the applicant if the activity is determined to be exempt from permitting. Such notice shall be given within 30 days of receipt of the notice or receipt of clarifying information that demonstrates that the proposed activity is exempt from permitting requirements. If the Department notifies an applicant within 30 days that the activity does not qualify for the noticed general permit, the application fee for the noticed general permit shall be applied to the application fee for an individual permit, provided that the applicant makes an application for such a permit within 30 days of notification by the Department.

(f) No change.

(g) Within three business days of receipt of an application for a noticed general permit, the Department shall send a copy of Section A and the materials submitted from Section B of Form 62-346.900(1), F.A.C., to the appropriate office of the U.S. Army Corps of Engineers (unless specifically authorized by the Corps to do otherwise), and, for noticed general permits under Rule 62-341.475, F.A.C., to the Florida Fish and Wildlife Conservation Commission.

(2) Individual (including Conceptual Approval) Permit Procedures.

(a) Within 30 days after receipt of an application, the Department shall determine whether the application is complete. In order to be considered complete, the submittal must contain the ~~required~~ fee required in Rule 62-346.071, F.A.C., a completed application Form 62-346.900(1), including the applicable information requested in Sections A through F, and any additional information or exhibits needed to clearly and legibly depict and describe the activity proposed, and reasonable assurance that the activity will meet the terms and conditions for issuance in Rule 62-346.301, F.A.C.

(b) No change.

(c) The applicant shall have 90 days from the date the Department makes a timely request for additional information to submit that information to the Department. If an applicant requires more than 90 days in which to respond to a request for additional information, the applicant shall notify the Department 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 requested 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 Department and the applicant. If the applicant chooses not to or is unable to respond to the request for additional information, the application shall be denied. However, an applicant may request that the application be deemed complete at any time, and the Department will determine whether the application qualifies for issuance of an individual permit within 90 days of the date of such a request by the applicant.

(d) The Department shall notify the applicant if the activity is exempt from permitting. Such notice shall be given within 30 days of receipt of the application or receipt of additional information that demonstrates to the Department that the proposed activity is exempt from permitting requirements. ~~Upon determination that the activity is exempt from permitting, the Department shall refund any tendered application fees.~~

(e) Applications for individual permits shall be evaluated for compliance with the criteria in Rule 62-346.301 and .302, F.A.C., as applicable, the Applicant's Handbook Volumes I and II, and the other rules incorporated by reference in this chapter.

(f) No change.

(g) The Department shall take agency action to issue or deny ~~make a determination and notify the applicant whether the application does or does not qualify for issuance of~~ an individual permit within 90 days of receipt of a complete application, in accordance with Section 120.60, F.S., and Rule 62-110.106, F.A.C., unless a written request to waive this time period is received from the applicant.

(h) No change.

(i) If the Department determines that the application does not qualify for issuance of an individual permit, or if the applicant does not respond to timely requests for additional information, the Department shall issue a notice of denial. If the Department informs the applicant that the application does not qualify for issuance of an individual permit, such notice must explain the reasons ~~in general terms~~, and what changes in the permit application, if any, would address the reasons for denial.

(j) through (k) No change.

(l) If an individual permit application involves activities located in, on, or over wetlands or other surface waters, as determined by the methodology ratified by section 373.4211, F.S., and codified in chapter 62-340, F.A.C., or as otherwise indicated in application form 62-343.900(1), F.A.C., the Department shall, at a minimum, forward a copy of Sections A and C of the form, including any drawings required in Section C, to the appropriate office of the U.S. Army Corps of Engineers, the Florida Fish and Wildlife Conservation Commission, and the Florida Department of State Division of Historical Resources within three business days of receipt of the application, unless specifically authorized by the Corps to do otherwise.

(3) through (5) No change.

~~Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.413, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.109, 373.118, 373.4141, 373.4145 FS. History — New 10-1-07, Amended _____.~~

62-346.091 Documents Incorporated by Reference.

(1) The following documents are hereby incorporated by reference for use in this Chapter:

(a) "Department of Environmental Protection and Northwest Florida Water Management District Environmental Resource Permit Applicant's Handbook—Volume I (General & Environmental)," including Appendices A, ~~and C, and E through G,~~ but excluding Appendices B and D, effective [Effective Date] October 1, 2007.

(b) "Department of Environmental Protection and Northwest Florida Water Management District Environmental Resource Permit Applicant's Handbook—Volume II (Design Requirements for Stormwater Treatment and Management Systems—Water Quality and Water Quantity)," including Appendices Appendix A and B, effective [Effective Date] October 1, 2007.

(c) Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between Northwest Florida Water Management District and Department of Environmental Protection," executed on [Date] August 2, 2007, and effective [Effective Date] October 1, 2007.

(d) Chapter 5, and Chapter 6 [except Section 3.04(swales), 3.05 (Parking lot storage), 3.08 (Rooftops), and 3.09 (Storage Tank Treatment)], of The Florida Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation, June 1988).

(e) *The Florida Stormwater, Erosion, and Sediment Control Inspector's Manual*, Florida Department of Environmental Protection and Florida Department of Transportation, Sixth Impression, April 2006.

(f) *State of Florida Erosion and Sediment Control Designer and Reviewer Manual*, Prepared for Florida Department of Transportation & Florida Department of Environmental Protection by HydroDynamics Incorporated in cooperation with Stormwater Management Academy, June 2007.

(g)(f) Florida Department of Transportation's "*Standard Specifications for Road and Bridge Construction, 2007.*"

(2) The documents incorporated by reference in this section may be inspected at ~~obtained from~~ a district or branch office of the Department or NFWFMD, or ~~by downloading from~~ the Internet sites of the Department at <http://www.dep.state.fl.us/water/wetlands/erp/rules/guide.htm>, or NFWFMD at <http://www.nwfwmd.state.fl.us/permits/permit-ERP.html>.

Rulemaking Specific Authority 373.026, 373.043, 373.044, 373.046, 373.113, 373.4145, 373.416, 373.418, 373.421, 403.805(1) FS. Law Implemented 373.026, 373.042, 373.409, 373.0421, 373.043, 373.046, 373.413, 373.4132, 373.4142, 373.4145, 373.416, 373.418, 373.423, 373.426, 373.428, 373.433, 373.436, 373.439, 380.06(9), 403.813(2) FS. History — New 10-1-07, Amended.

62-346.095 Operation, ~~and~~ Maintenance, and Inspections.

(1) Upon completion of a system constructed in conformance with an individual permit issued under this chapter, ~~or a noticed general permit under Chapter 62-341, F.A.C.~~, the permit must be converted from the construction phase to an operation and maintenance phase. The responsibility for operation and maintenance of systems permitted under this chapter or Chapter 62-341, F.A.C., shall be an obligation for the life of the system by a single entity that wholly owns or controls the lands on which any component of the permitted system is located, or in the case where a local government will operate a portion of a system, a maximum of two entities. Such entity or entities ~~also~~ must have the fiscal, legal, and logistical capability to perform operation and maintenance in accordance with Department rules and permit conditions. The conversion shall follow the procedures specified below, except that:

(a) No change.

(b) The operation phase of Systems that serve mining activities operations ~~subject to the land reclamation requirements of Chapter 378, F.S., shall be allowed to terminate, without the need to apply for abandonment of the permit, after the mine, or its subunits as applicable not be required to be converted to an operation and maintenance phase if they:~~

1. Have been successfully reclaimed in accordance with Chapter 378, F.S., other than lands disturbed by mining operations that are not subject to the requirements of Chapter 378, F.S.;

2. No change.

3. Do not contain components that require long-term operation or maintenance, such as stormwater management systems, conservation easements, ~~state-owned sovereign~~ submerged lands authorizations, dams, above-grade impoundments, works, water control structures, erosion and sedimentation controls, or dewatering pits.

In addition, if the mine already is operating under an operation and maintenance phase of an individual permit, such operation and maintenance phase shall be allowed to terminate upon successful completion of all phases of reclamation and receipt of final success determinations by the Department over lands reclaimed in accordance with the rules adopted pursuant to ~~under the permit issued under~~ Chapter 378, F.S.

(2)(a) For systems that do not serve an individual, private single-family dwelling unit, duplex, triplex, or quadruplex, ~~within~~ 30 days after completion of construction of a whole system, or independent portion of a system, constructed in conformance with an individual permit issued under this chapter, the permittee shall submit Form 62-346.900(4), "As-Built Certification by a Registered Professional," incorporated by reference herein. The certification shall include as-built drawings in the form of the permitted drawings that clearly show any substantial deviations made during construction. The plans must be clearly labeled as "as-built" or "record" drawings. The submittal of the above forms does not require a processing fee, and their review shall not require processing as a permit modification under Rule 62-346.100, F.A.C. If the registered professional has certified that the system has been built substantially in compliance with the plans and specifications in the permit, and that such system is ready for inspection, the permittee shall also submit Form 62-346.900(6), "Request for Conversion of Environmental Resource Individual Stormwater Management Permit Construction Phase to Operation and Maintenance Phase," incorporated by reference herein. Upon receipt and review of both forms, the Department will determine compliance with the terms and conditions of the permit and notify the permittee whether the conversion to the operation and maintenance phase will become effective. The operation and maintenance phase of an individual permit will not become effective if the Department determines that the activity subject to the permit is not in substantial compliance

with all the plans, specifications, terms, and conditions of the permit. In such case, the permittee will be responsible for any necessary permit modifications, alterations, maintenance or repairs to bring the system into such compliance. The submittal of the above forms does not require a processing fee, and their review shall not require processing as a permit modification under Rule 62-346.100, F.A.C. Any required modification to the permit will be processed in accordance with Rule 62-346.100, F.A.C.

(b) For activities associated with an individual, private single-family dwelling unit, duplex, triplex, or quadruplex that is not part of a larger plan of development proposed by the applicant, within 30 days after completion of construction of the system, the permittee shall submit a fully executed Form 62-346.900(5), "Construction Completion and Inspection Certification for a System Serving an Individual, Private Single-Family Dwelling Unit," incorporated by reference herein, certifying that the system was constructed in conformance with all the terms, specifications, and conditions of the permit. Upon receipt of this form, the construction phase of this permit shall automatically convert to an operation and maintenance phase. However, if at any time the Department determines that such a system was not built in conformance with the terms and conditions of the permit, the permittee shall be subject to enforcement by the Department and for all measures required to bring the system into compliance with the permit. The permittee shall remain liable for compliance with the terms of the permit for the life of the system, unless such permit is transferred in accordance with Rule 62-346.130, F.A.C.

(3) Each phase or independent portion of the permitted system must be approved by the Department for conversion to the operation phase prior to the initiation of the permitted use of: that phase or independent portion of the system facility; or the site infrastructure located within the area served by that portion or phase of the system. The request for conversion to the operating phase for any phase or independent portion of the permitted system shall occur after construction of the roads, stormwater conveyance systems, treatment and attenuation systems, and for that particular phase or independent portion of the system have been completed.

(4) No change.

(5) For those systems that will be operated and maintained by an entity that requires an easement or deed restriction in order to operate and maintain the system in conformance with the permit, such easement or deed restriction, together with any other final operation and maintenance documents required by Part V of Applicant's Handbook Volume I, must be submitted to the Department for approval prior to conversion to the operation and maintenance phase. Deed restrictions, easements, and other operation and maintenance documents that require recordation with the Clerk of the Circuit Court 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 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 Department 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.

(6) The operation and maintenance entity of a surface water management system, except those serving an individual, private single-family dwelling unit, duplex, triplex, or quadruplex that is not part of a larger plan of common development, shall provide for the inspection of the stormwater management system at least once every third year after conversion of a permit to the operation phase, unless otherwise specified in the permit. However, systems that include vegetated natural buffers and all systems located in karst sensitive areas shall be inspected at least annually. A report describing the results of the inspection and certifying that the system is operating as designed and permitted must be filed with the Department within 30 days after the third-year inspection, including those systems using a vegetated natural buffer or located in a karst sensitive area. A report shall also be submitted within 30 days of a system failure or deviation from the permit. The results of all such inspections shall be filed with the Department using Form 62-346.900(8), "Operation and Maintenance Inspection Certification," incorporated by reference herein. The permittee of all other surface water management systems shall be subject, through special permit conditions, to routine inspecting and reporting on the permitted system when such monitoring and reporting is needed to ensure that the construction and operation of the system will not cause harm to public health, safety, or welfare, or harm to water resources.

(7) through (8) No change.

Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.4145, 373.416, 373.418, 403.805(1) FS. Law Implemented 373.118, 373.4141, 373.4145, 373.416 FS. History — New 10-1-07, Amended _____.

62-346.100 Modification of Permits.

(1) Modifications to an existing, currently valid individual permit under this Chapter may be requested by the permittee as follows:

(a) Applications for major modifications shall be made in accordance with the procedures for applying for a new permit applicable to the type of permit originally obtained. Applications for minor modifications shall be made in accordance with the same provisions, or by letter that describes the proposed modification, along with drawings reflecting changes in the design of the system. The modification request shall include payment of the fee required by Rule 62-346.071, F.A.C., ~~except that minor modifications to noticed general permits shall not require an additional fee.~~

(b) No change.

(c) All modification requests shall be reviewed, and will be issued or denied in accordance with the procedures in Rule 62-346.090(2), F.A.C., applicable to the type of permit being modified.

(d) Minor modifications include requests for a time extension pursuant to Rule 62-346.120, F.A.C., to correct errors or typographical mistakes, to incorporate changes requested by the Department or required through permits issued by other regulatory agencies, to change due dates for reporting or performance deadlines, to transfer a permit, or to make minor technical changes. ~~However, for the purpose of this chapter, minor modifications shall be considered minor only when it does not:~~

1. Require a new site inspection or detailed technical analysis by the Department to evaluate the request; ~~or~~
2. Lead to substantially different environmental impacts or will lessen the impacts of the original permit; or
3. ~~2.~~No change.

(e) A modification that does not meet all the requirements in paragraph (d) above is a major modification.

(2) No change.

(3) A person or entity other than a permittee or the Department may request a modification of a currently valid individual permit only when the person or entity has purchased, or is authorized to and intends to take ownership through condemnation or a contract to purchase, the part of a permitted system subject to the requested modification. In such case, the entity requesting the modification must submit either a formal application or letter modification in accordance with subsection (1) above, and must demonstrate that both the modified portions of the system and the unmodified portions of the system, including portions of the system remaining in the ownership of the existing permittee, will continue to comply with the ~~criteria conditions for issuance~~ in Rule 62-346.301, F.A.C., the criteria in Rule 62-346.302, F.A.C., as applicable, Applicant's Handbook Volumes I and II, and all permit conditions. ~~Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.026(7), 373.043, 373.109, 373.118, 373.409, 373.413, 373.4141, 373.4142, 373.4145, 373.416, 373.418, 373.429 FS. History — New 10-1-07, Amended _____.~~

62-346.110 Duration of Permits.

~~Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.118, 373.409, 373.413, 373.4142, 373.4145, 373.416, 373.426 FS. History — New 10-1-07, Amended _____.~~

62-346.120 Permit Extensions.

(1) through (2) No change.

(3) If a timely, ~~sufficient~~, and complete request application is received for an extension of a permit to construct, alter, abandon, or remove a system, then the existing permit shall remain in full force and effect until the Department takes action on the application for extension. If the request for permit extension is denied or the terms limited, the permit shall not expire until the last day for requesting review of the Department order, or a later date fixed by order of the reviewing court.

~~Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.4145, 373.418, 403.805(1), FS. Law Implemented 373.118, 373.409, 373.413, 373.4145, 373.416, 373.426, 373.429 FS. History — New 10-1-07, Amended _____.~~

62-346.130 Transfer of Ownership or Permit.

(1) No change.

(2) Except as provided in subsection (1), the request for transfer will be processed as a modification of the permit in accordance with Rule 62-346.100, F.A.C. The Department shall approve a request for transfer of a permit if the proposed transferee provides reasonable assurance that it can construct, operate and maintain the permitted system in conformance with the terms and conditions of the permit. Such provisions of reasonable assurance shall be limited to the ability of the transferee to comply with the conditions of the existing permit, including the ability to operate and conduct routine custodial maintenance on the system in accordance with the terms and conditions of the permit, and demonstration of ownership or control of the lands subject to the modification. Nothing herein shall limit the ability of the Department to modify the permit after transfer, as provided in Rule 62-346.100, F.A.C. If the Department proposes to deny the transfer, it shall, within 30 days of receipt of the application for transfer, provide

both the existing permittee and the proposed new permittee a written notice of denial of such transfer, which will include the reasons for the denial.

(3) No change.

Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.4145, 373.418, 403.805(1), FS. Law Implemented 373.118, 373.109, 373.409, 373.413, 373.4142, 373.4145, 373.416(2), 373.426 FS. History — New 10-1-07, Amended _____.

62-346.140 Suspension and Revocation.

Rulemaking Specific Authority 373.026, 373.043, 373.044, 373.118, 373.4145, 373.418, 373.439, 403.805(1) FS. Law Implemented 373.026, 373.118, 373.413, 373.414, 373.4145, 373.416, 373.426, 373.429, 373.439 FS. History — New 10-1-07, Amended _____.

62-346.150 Relinquishment and Abandonment.

(1) In accordance with Section 373.426(1), F.S., the owner of a stormwater management system that no longer requires a permit pursuant to Rule 62-346.050, F.A.C., may request to abandon future operation of the system or to relinquish a permit under Part IV of Chapter 373, F.S., that authorized the system subject to the permittee applying for, and receiving written authorization from, the Department prior to abandoning or relinquishing the permit for the system. The Department will authorize abandonment or relinquishment upon determination that the permittee has provided reasonable assurance has been provided that:

(a) There will not be a violation of state water quality standards as set forth in Chapters 62-302 and 62-550, F.A.C., as a result of abandonment or relinquishment of the permit;

(b) Adjacent or nearby properties not owned or controlled by the applicant will not be adversely affected by drainage or flooding; and

(c) There will be no harm to the water resources as a result of abandonment or relinquishment of the permit.

(2) A system that has been abandoned for a period of three or more years shall be subject to the provisions of Section 373.426(2), F.S.

(3) The determination of title to the ownership of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works is subject to a court of competent jurisdiction in accordance with Section 373.426(3), F.S.

Rulemaking Authority 373.026(7), 373.043, 373.118, 373.4145, 373.418, 373.426, 403.805(1) FS. Law Implemented 373.117, 373.118, 373.409, 373.413, 373.4132, 373.4145, 373.416, 373.426, 403.0877 FS. History — New _____.

62-346.301 Conditions for Issuance of Individual Permits.

(1) In order to obtain an individual permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of a surface water stormwater management system:

(a) through (c) No change.

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

~~(e)(d)~~ No change.

~~(f)(e)~~ Will not cause adverse secondary impacts to the water resources. ~~Until the effective date of rules required under Section 373.4145(1)(b), F.S., this shall be limited to not causing a violation of water quality standards and not lowering or raising seasonal water levels in adjacent surface waters of the state to an extent that prevents the stormwater management system from functioning as designed, not adversely altering normal water level fluctuations in adjacent surface waters of the state, and not otherwise adversely impacting the maintenance of surface or ground water levels or surface water flows established pursuant to Section 373.042, F.S.~~

(f) through (g) renumber (g) through (h) No change.

~~(i)(h)~~ Will comply with any applicable special basin or geographic area criteria rules incorporated by reference in this chapter. When karst features exist on the site of a proposed stormwater-management system, in addition to paragraphs (a) through ~~(h)(g)~~ above, the applicant must provide reasonable assurance that untreated stormwater from the proposed system will not reach the Floridan Aquifer through sinkholes, solution pipes, or other karst features.

(2) No change.

~~(3) Except as provided in subsection 62-346.301(2), F.A.C., a showing by the applicant that a stormwater management system complies with the applicable criteria in Part III, Applicant's Handbook Volume II, shall create a presumption that the applicant has provided reasonable assurance that the proposed activity meets the requirements in paragraphs 62-346.301(1)(a), (b), (c), and (e), F.A.C. A showing by the applicant that a stormwater management system complies with the applicable criteria in Part IV, Applicant's Handbook Volume II, shall create a presumption that the applicant has provided reasonable assurance that the proposed activity meets the requirements in paragraph~~

62-346.301(1)(d), F.A.C. A showing by the applicant that a stormwater management system complies with the applicable criteria in Part V, Applicant's Handbook Volume I and Part V of Applicant's Handbook Volume II, shall create a presumption that the applicant has provided reasonable assurance that the proposed activity meets the requirements in paragraphs 62-346.301(1)(f), F.A.C. The applicant must also demonstrate that the activity can be operated and maintained in accordance with requirements in Part V of the Applicant's Handbook Volume I, in order to meet the requirements in paragraph 62-346.301(g), F.A.C.

(4) An applicant's submittal of alternative designs to those provided in Applicant's Handbook Volumes I and II will be reviewed by the Department to determine whether, based on plans, test results, or other information, the alternative design provides reasonable assurance that the project satisfies the conditions for issuance in Rule 62-346.301, F.A.C.

(3)(5) In addition to the criteria in subsections 62-346.301(1); and (2) and (3), F.A.C., an applicant proposing the construction, alteration, operation, maintenance, abandonment, or removal of a dry storage facility for 10 or more vessels that is functionally associated with a boat launching area must provide reasonable assurance that the facility, taking into consideration any secondary impacts, will meet the public interest test of Section 373.414(1)(a), F.S., including the potential adverse impacts to manatees.

(4) The standards and criteria, including the provisions for elimination or reduction of impacts, and the mitigation provisions contained in sections 10.2.1 through 10.2.1.3 and sections 10.3 through 10.3.8, respectively, of Applicant's Handbook Volume I adopted by reference in section 62-346.091, F.A.C., shall determine whether the reasonable assurances required by subsection 62-346.301(1), F.A.C., and subsection 62-346.302, F.A.C., have been provided, as applicable.

Rulemaking Specific Authority 373.026(7), 373.043, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.042, 373.409, 373.413, 373.4142, 373.4145, 373.416, 373.4132, 373.426, 373.429 FS. History — New 10-1-07, Amended _____.

62-346.302 Additional Conditions for Issuance of an Individual and (Including Conceptual Approval) Permits.

(1) In addition to the conditions set forth in section 62-346.301, F.A.C., in order to obtain an individual (including conceptual approval) permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, and abandonment of a system:

(a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the activity will be clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Applicant's Handbook Volume I adopted by reference in section 62-346.091, F.A.C.:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;

5. Whether the activity will be of a temporary or permanent nature;

6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.; and

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

(b) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters as set forth in sections 10.2.8 through 10.2.8.2 of Applicant's Handbook Volume I.

(c) Located in, adjacent to or in close proximity to Class II waters or located in Class II waters or Class III waters classified by the Department of Agriculture and Consumer Services as approved, restricted, conditionally approved, or conditionally restricted for shellfish harvesting as set forth or incorporated by reference in Chapter 5L-1, F.A.C. (July 29, 2008), will comply with the additional criteria in section 10.2.5 of Applicant's Handbook Volume I.

(d) Which constitute vertical seawalls in estuaries or lagoons, will comply with the additional criteria provided in section 10.2.6 of Applicant's Handbook Volume I.

(2) When determining whether a permit applicant has provided reasonable assurances that Department's permitting standards will be met, the Department shall take into consideration the applicant's violation of any Department rules adopted pursuant to Sections 403.91 through 403.929, F.S., (1984 Supp.), as amended, or any

Department rules adopted pursuant to Part IV, Chapter 373, F.S., relating to any other project or activity and efforts taken by the applicant to resolve these violations.
Rulemaking Authority 373.026(7), 373.043, 373.414(9), 403.805(1), FS. Law Implemented 373.042, 373.413, 373.414, 373.416, 373.426, 380.23, FS. History—New

62-346.381 General and Special Limiting Conditions.

(1) The following general conditions shall be applicable to and binding on all individual permits issued pursuant to this chapter, unless the conditions are not applicable to the activity authorized by the permit, or where the conditions must be modified to accommodate unique, project-specific conditions.

(a) No change.

(b) This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications, shall be kept at the work site of the permitted activity during the construction phase. The complete permit shall be available for review at the work site upon request by the Department staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit. A weather-resistant sign, measuring at least 8 ½ inches by 11 inches, and including the permit number (in lettering that is easily visible from the access road) shall be placed on the property facing the road.

(c) No change.

(d) Immediately prior to, ~~and~~ during construction, and for the period of time after construction to allow for stabilization of all disturbed areas, the permittee shall implement and maintain erosion and sediment control best management practices, such as silt fences, erosion control blankets, mulch, sediment traps, polyacrylamide (PAM), temporary grass seed, permanent sod, and floating turbidity screens ~~required~~ to retain sediment on-site and to prevent violations of state water quality standards. These devices ~~Turbidity barriers~~ shall be installed, used, and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work, ~~and~~ ~~Turbidity barriers~~ shall remain in place at all locations until construction is completed and soils are permanently stabilized and vegetation has been established. All best management practices shall be in accordance with the guidelines and specifications described in the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Transportation and Florida Department of Environmental Protection, 2007 Chapter 6 of the Florida Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation, June 1988), unless a project-specific erosion and sediment control plan is approved as part of the permit. If project-specific conditions require additional measures during any phase of construction or operation to prevent erosion or control sediments beyond those specified in the approved erosion and sediment control plan, the permittee shall implement additional best management practices as necessary, in accordance with the guidelines and specifications in the State of Florida Erosion and Sediment Control Designer and Reviewer Manual, Prepared for Florida Department of Transportation & Florida Department of Environmental Protection by HydroDynamics Incorporated in cooperation with Stormwater Management Academy, June 2007. Chapter 6 of the Florida Development Manual. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources as soon as practicable. Once project construction has been deemed complete, including the re-stabilization of all side slopes, embankments, and other disturbed areas, and before conversion of the permit to the operation and maintenance phase, all silt screens and fences, temporary baffles, and other materials that are no longer required for erosion and sediment control shall be removed.

(e) through (f) No change.

(g) Within 30 days after completion of construction of the whole system, or independent portion of the system, the permittee shall notify the Department that construction has been completed and the system is ready for inspection by submitting one of the following forms to the Department office that issued the permit:

1. For systems other than those that serve an individual, private single-family residential dwelling unit, duplex, triplex, or quadplex, Form 62-346.900(4), "As-Built Certification by a Registered Professional." If the registered professional has certified that the system has been built substantially in compliance with the plans and specifications in the permit, and that such system is ready for inspection, the permittee shall also submit Form 62-346.900(6), "Request for Conversion of Environmental Resource Individual Stormwater Management Permit Construction Phase to Operation and Maintenance Phase." The system shall not be used and operated for its permitted purpose until the Department has approved the request to authorize the operation phase, in accordance with Rule 62-346.095, F.A.C. The "As-Built Certification" shall be ~~based on the on-site observation of construction by the registered professional or by a designee under the direct supervision of the registered professional, and review of the permitted drawings~~ for the purpose of determining if the work was completed in substantial compliance with permitted plans and specifications. The certification shall include as-built drawings in the form of the permitted drawings that clearly show

any substantial deviations made during construction. The plans must be clearly labeled as “as-built” or “record” drawings. ~~The following information, at a minimum, shall be verified on the as-built or record drawings:~~

~~1. Dimensions and elevations of all discharge structures including all weirs, slots, gates, pumps, pipes, and oil and grease skimmers;~~

~~2. Locations, dimensions, and elevations of all filter, exfiltration, or underdrain systems including cleanouts, pipes, connections to control structures, and points of discharge to the receiving waters;~~

~~3. Dimensions, elevations, contours, or cross sections of all treatment storage areas sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems, when appropriate;~~

~~4. Dimensions, elevations, contours, final grades, or cross sections of the system to determine flow directions and conveyance of runoff to the treatment system;~~

~~5. Dimensions, elevations, contours, final grades, or cross sections of all conveyance systems utilized to convey off-site runoff around the system;~~

~~6. Existing water elevations and the date determined; and~~

~~7. Elevation and location of benchmarks for the survey.~~

2. For systems that serve an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex, Form 62-346.900(5), “Construction Completion and Inspection Certification for a System Serving an Individual, Private Single-Family Dwelling Unit.”

(h) through (j) No change.

(k) This permit does not convey to the permittee or create in the permittee any property right or any interest in real property, nor does it authorize any entrance upon or activities on property that is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in this permit or Chapter 62-346, F.A.C. Permittees having the right to exercise the power of eminent domain or who had a contract to purchase the property subject to this permit shall not commence any work under this permit until the permittee has provided the Department with proof of transfer of ownership of the property in the name of the permittee. If such transfer of ownership does not occur, the permittee shall surrender this permit, and the permit shall be null and void.

(l) through (m) No change.

(n) The permittee shall notify the Department in writing at least 30 days prior to any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. Where ownership of the land subject to the permit was demonstrated through a long-term lease, the lessee must have transferred ownership and control of the permitted system to the current landowner or new lessee, effective prior to or on the date of expiration of the lease. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 62-346.095 and 62-346.130, F.A.C.

(o) through (s) No change.

(2) In addition to those general conditions set forth in subsection (1) above, the Department shall impose on any individual permit granted under this chapter such reasonable project-specific special conditions as are necessary to assure that the permitted system will not be harmful to the water resources, as set forth in Rules 62-346.301 and 302, as applicable, F.A.C., and the Applicant’s Handbook Volumes I and II.

Rulemaking Specific Authority 373.026(7), 373.043, 373.4145, 373.418, 403.805(1) F.S. Law Implemented 373.117, 373.409, 373.413, 373.4142, 373.4145, 373.416, 373.418, 373.419, 373.422, 373.423, 373.426, 373.428, 403.0877 F.S. History — New 10-1-07, Amended _____.

62-346.451 Emergency Authorizations and Actions. No change.

Rulemaking Specific Authority 373.026(7), 373.043, 373.4145, 373.418, 403.805(1) FS. Law Implemented 120.569(2), 373.026(7), 373.119, 373.409, 373.413, 373.4145, 373.416, 373.418, 373.426, 373.439 F.S. History — New 10-1-07, Amended _____.

62-346.900 Environmental Resource Permit Forms.

The forms and instructions used in the Environmental Resource Permit program under this chapter are incorporated by reference ~~as stated in subsections (1) through (10)~~ below. The 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 Internet sites of the Department at <http://www.dep.state.fl.us/water/wetlands/erp/forms.htm>, or NFWFMD at <http://www.nfwfmd.state.fl.us/permits/permits-ERP.html>, or from any local district or branch office of the Department (see <http://www.dep.state.fl.us/secretary/dist/>) or NFWFMD, or by writing to the Florida Department of Environmental Protection, Submerged Lands and Environmental Resources Office, M.S. 2500, 2600 Blair Stone

Road, Tallahassee, Florida 32399-2400, or to Northwest Florida Water Management District, District Headquarters Office, 75 Water Management Drive, Havana, Florida 32333.

(1) “Joint Application for Environmental Resource Stormwater Permit / Authorization to Use State-Owned Submerged Lands / Federal Dredge and Fill Permit in Northwest Florida,” incorporated by reference in subsection 62-346.070(2), F.A.C., [Effective Date] ~~October 1, 2007~~.

(2) “Notice of Intent to Use an Environmental Resource Noticed General Permit in Northwest Florida,” incorporated by reference in subsection 62-346.070(2), F.A.C., [Effective Date] ~~October 1, 2007~~.

(3) “Construction Commencement Notice,” incorporated by reference in paragraph 62-346.381(1)(f), F.A.C., [Effective Date] ~~October 1, 2007~~.

(4) “As-Built Certification by a Registered Professional,” incorporated by reference in subsection 62-346.095(2), F.A.C., [Effective Date] ~~October 1, 2007~~.

(5) “Construction Completion and Inspection Certification for a System Serving an Individual, Private Single-Family Dwelling Unit,” incorporated by reference in subparagraph 62-346.381(1)(g)2., F.A.C., [Effective Date]. ~~Systems Not Requiring Certification by a Registered Professional,~~ — to be developed after adoption of the rules authorized under Section 373.4145(1)(a), F.S.

(6) “Request for Conversion of Environmental Resource Individual Stormwater Management Permit Construction Phase to Operation and Maintenance Phase,” incorporated by reference in subsection 62-346.095(2), F.A.C., [Effective Date] ~~October 1, 2007~~.

(7) “Notification of Transfer of Permit,” incorporated by reference in subsection 62-346.130(1), F.A.C., [Effective Date] ~~October 1, 2007~~.

(8) “Operation and Maintenance Inspection Certification,” incorporated by reference in subsection 62-346.095(6), F.A.C., [Effective Date] ~~October 1, 2007~~.

(9) through (10) No change.

(11) “Request for Verification of an Exemption,” incorporated by reference in paragraph 62-346.070(2)(c), F.A.C., [Effective Date].

Rulemaking Specific Authority 373.026(7), 373.043, 373.118, 373.4145, 373.418, 373.421, 403.805(1) FS. Law Implemented 373.019, 373.026, 373.109, 373.117, 373.118, 373.403, 373.409, 373.413, 373.4132, 373.414, 373.4141, 373.4142, 373.4145, 373.416, 373.418, 373.419, 373.421, 373.4211, 373.423, 373.426, 373.428, 373.429, 380.06, 403.0877, 403.813(2) FS. History — New 10-1-07, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet G. Llewellyn, Director, Division of Water Resource Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Sole, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 8, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED: November 2, 2007