

APPENDIX D

**Subparagraph 40C-4.041(2)(b)8 as it existed on
September 25, 1991**

ANNOTATIONS

Validity

Challenge of rule's validity failed, where petitioner argued that agency had neglected to describe in sufficient detail territory where permits were required; since precise boundaries of territory could be determined from information contained in rule and from maps available to public, no practical reason existed to require promulgation by rule of such metes and bounds. Sartori v. St. Johns River Water Management District (DOAH 81-2393R), 3 FALR 2456-A (1981).

Determination that challenged rule constituted incomplete exercise of legislative authority did not render such exercise invalid, where petitioner complained that neighboring property remained free from regulation due to agency procrastination; petitioner had suffered no injury as result of this delay. Sartori v. St. Johns River Water Management District (DOAH 81-2393R), 3 FALR 2456-A (1981).

40C-4.034 Revocation and Modification of Permits.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.429 FS. History—New 2-20-77, Amended 12-26-77, Formerly 161-4.34, Transferred to 40C-4.341, Amended 2-3-81, Formerly 40C-4.34.

40C-4.041 Permit Required.

(1) Unless expressly exempt by statute or rule, a surface water management permit must be obtained from the District prior to the construction, alteration, operation, maintenance, removal or abandonment of any dam, impoundment, reservoir, appurtenant work or works and for the maintenance and operation of existing agricultural surface water management systems or the construction of new agricultural surface water management systems.

(2) The District issues three types of surface water management permits: conceptual approval permits, individual permits and general permits.

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

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

1. Is capable of impounding a volume of water of forty or more acre feet; or
2. Serves a project with a total land area equal to or exceeding forty acres; or
3. Serves a project with a total land area equal to or exceeding ten acres, when any part of the project is located within the Wekiva River Hydrologic Basin north of State Road 436, or within the Econlockhatchee River Hydrologic Basin; or
4. Provides for the placement of twelve or more acres of impervious surface which constitutes 40 or more percent of the total land area; or
5. Provides for the placement of one half acre or more of impervious surface, when any of the impervious surface is located within the Wekiva River Hydrologic Basin north of State Road 436; or
6. Provides for the placement of two acres or more of impervious surface, when any of the

impervious surface is located within the Econlockhatchee River Hydrologic Basin; or

7. Contains a traversing work which traverses:

a. A stream or other watercourse with a drainage area of five or more square miles upstream from the traversing work; or

b. An impoundment with more than ten acres of surface area; or

8. Contains a surface water management system which serves an area of five or more contiguous acres of wetlands with a direct hydrologic connection to:

a. A stream or other watercourse with a drainage area of five or more square miles; or

b. An impoundment with no outfall, which is not wholly owned by the applicant and which is ten acres or greater in size; or

c. A wetland not wholly owned by the applicant.

9. Is wholly or partially located within the Wekiva River Hydrologic Basin's Riparian Habitat Protection Zone as described in Paragraph 40C-41.063(3)(e); or

10. Consists of or includes filling in, excavation in, or drainage of a wetland which is not isolated when any of the filling, excavation, or drainage is located within the Econlockhatchee River Hydrologic Basin; or

11. Is wholly or partially located within any isolated wetland.

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

(d) An individual permit may be issued for projects which do not qualify for general permits under the provisions of Chapter 40C-40, F. A. C. An individual permit may authorize the construction, alteration, operation, maintenance, abandonment or removal of a system.

(e) An individual or general permit may be issued for the maintenance and operation of existing agricultural surface water management systems or the construction of new agricultural surface water management systems which satisfy the water quality practices and performance standards of chapter 40C-44, F.A.C.

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

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

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

justification and anticipated impacts of the designation.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.409, 373.413, 373.416, 373.426, 373.429 FS. History—New 1-31-77, Formerly 16I-4.04, 40C-4.04, Amended 2-3-81, 12-7-83, Formerly 40C-4.041, 40C-4.0041, Amended 8-28-88, 8-1-89, 4-3-91, 8-11-91, 9-25-91.

40C-4.042 Formal Wetland Determination.

(1) Pursuant to section 373.421, F.S., a real property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in real property may petition the District for a formal wetland determination for that property. A formal wetland determination means the District will verify the locations on the property of the landward boundaries of wetlands as defined by the District.

(2) To petition for a formal wetland determination, the petitioner must submit to the District the following:

(a) seven copies of completed form 40C-1.181(12), including copies of all items required by that form, and

(b) a wetland determination fee as prescribed in section 40C-1.603, F.A.C.

(3)(a) Within 30 days of receipt of a petition for a formal wetland determination, the District shall notify the petitioner of any additional information which may be necessary in order to complete review of the petition. The District shall complete the determination and shall issue a notice of intended agency action within 30 days after the petition is deemed complete. The District will publish the notice of intended agency action on the petition in a newspaper of general circulation in the county or counties where the property is located.

(b) The provisions of sections 120.57 and 120.59, F.S., apply to formal wetland determinations made pursuant to this section. Any person whose substantial interests will be affected by the District's proposed action on the petition may request an administrative hearing on the proposed action pursuant to section 40C-1.511, F.A.C. If no request for an administrative hearing is filed, the District will then take final action on the petition for the formal wetland determination.

(4) The petitioner or his agent shall clearly delineate the landward boundary of wetlands on the property. A District representative will verify the location of the boundary line. The petitioner must then have the boundary line surveyed, and must return four certified copies of that survey to the District. In order for the petition to be deemed complete, the District must receive four certified copies of the survey.

(5) The executive director is delegated the authority to take final action on petitions for formal wetland determinations under this section. The executive director shall issue a formal wetland determination only if the petitioner has satisfied all the requirements of this section.

(6) A formal wetland determination shall be binding for the time period issued provided physical conditions on the property do not change so as to

alter the wetland boundaries during that period. A formal wetland determination shall be issued for five years.

(7) Any person eligible to petition for a wetland determination may petition to renew a formal wetland determination prior to the expiration date. A petition to renew an expired wetland determination shall be processed in the same manner as a petition for an original formal wetland determination. Persons petitioning the District to renew an expired formal wetland determination must submit the information and renewal fee required by subsections 40C-4.042(2) through (4), F.A.C.

(8) The Governing Board may revoke the formal wetland determination upon a finding that the petitioner has submitted inaccurate information to the District.

(9) A formal wetland determination issued pursuant to this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable pursuant to section 120.565, F.S.

(10) The District may issue informal nonbinding preapplication wetland determinations or otherwise institute nonbinding wetland determinations on its own initiative as provided by law.

Specific Authority 373.044, 373.113, 373.421 FS. Law Implemented 373.421 FS. History—New 11-12-91.

40C-4.051 Exemptions.

(1) Exemptions are as found in:

(a) Section 373.406, Florida Statutes.

(b) Section 403.813(2), Florida Statutes.

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

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

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

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

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

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

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

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

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

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