40E-6
WORKS OR LANDS OF THE DISTRICT

CHAPTER 40E-6
WORKS OR LANDS OF THE DISTRICT

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40E-6.011 Policy and Purpose.

(1) This chapter governs the use of or connection to works or lands of the District. Conditions and criteria are established to ensure that uses are compatible with the construction, operation, and maintenance of such works or lands.

(2) Due to the critical importance of works and lands of the District in providing flood protection and other benefits, it is considered essential that the District retain complete dominion and control over the use of such works or lands, including those subject to right of way occupancy permits. The District acts in a proprietary capacity in acquiring lands or interests therein for utilization as works of the District. These rules are based upon proprietary concepts of property law. A "permit" to utilize works or lands of the District is a contract between the District and the "permittee," whereby the permittee obtains a license which is revocable at will, except as otherwise provided herein. All risk of loss regarding expenditures in furtherance of the permitted use is borne by the permittee. The District retains complete discretion as to the manner, if any, in which works or lands of the District shall be utilized, and nothing in these rules is intended to limit that discretion.

(3) An exception to subsection (2), above, is made for governmental entities and utilities, which may have their consent to utilize District works or lands revoked only for cause, pursuant to the criteria set forth in this chapter.

(4) The District has determined that an unencumbered 40 foot wide strip of right of way, measured from the top of bank landward, is required in order for the District to perform the required routine and emergency operations and maintenance activities necessary to insure flood protection to the entire community. In this 40 foot right of way, subject only to limited exceptions provided in this rule, the District shall not authorize any above ground facilities or other encroachments.

(5) The requirement for the unencumbered 40 foot right of way shall be applicable regardless of the District's quality of title to the right of way and regardless of the width of the overbank right of way.

(6) In the past, the District has authorized certain above ground facilities and uses on its rights of way within a 40 foot wide area adjacent to the top of bank, as set forth in subsection (4), above. However, over time and with experience gained in disaster preparation, operation and recovery, the District has determined that these previously authorized above ground facilities and uses are now inconsistent with the current and future operation and maintenance needs of the District. These facilities and uses have also been determined by the District to increase the operation and maintenance costs (for both routine and emergency operation and maintenance activities) and pose a significant additional physical burden on District staff. Subject to those uses specifically allowed in the criteria (Basis of Review), no future authorizations by the District shall allow above ground facilities or uses within that 40 foot wide area adjacent to the top of bank within the right of way, and all previous authorizations for facilities and uses shall be expressly limited to minimize their adverse impact on District operations and maintenance. Specifically, such authorizations shall not be modified or transferred, and shall be subject to the revocation provisions set forth herein as determined necessary by the District in order to meet its current and future operation and maintenance responsibilities to provide adequate flood protection to the community.

(7) In order to effectively and efficiently evaluate proposed installations of above ground facilities and uses, the District has segmented the canal and rights of way into five (5) operational zones shown on the diagram below:

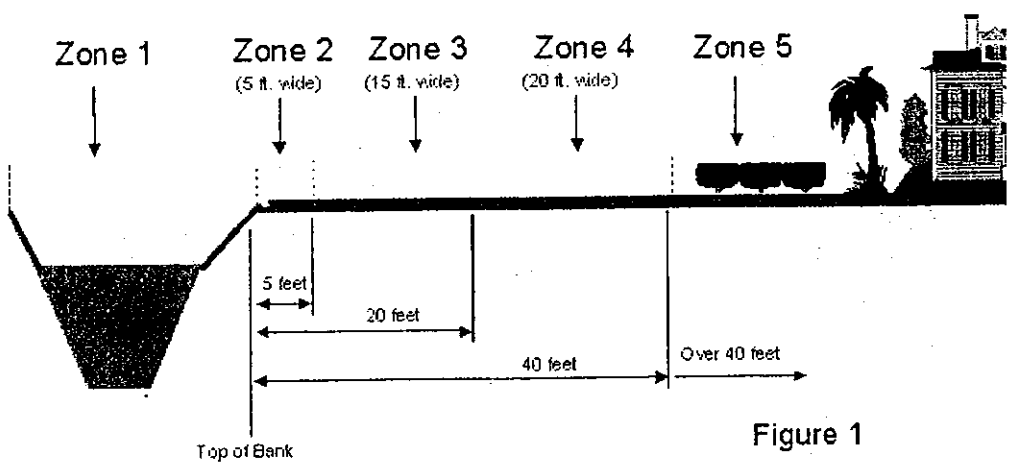

Figure 1

*The District's rights of way vary in width, and may be either less than forty feet or more than forty feet in width. Accordingly, in those cases when the right of way is less than forty feet, only those zones depicted above would be applicable to the actual width of the right of way.

The specific above ground facilities and uses which are consistent with the District's operation and maintenance needs, and which will generally be authorized are set forth in Rules 40E-6.121 and 40E-6.221, F.A.C. Those facilities and uses not specifically identified as being consistent with the District's operation and maintenance needs for the respective zones have been determined by the District to be inconsistent with District operation and maintenance needs and no District authorization shall be granted.

(8) Due to the varying widths and physical limitations of the rights of way obtained by the District for the canals of the Big Cypress Basin, maintenance of the Basin canals is currently performed with different equipment than is utilized throughout the remainder of the District. Based on the differing maintenance needs of the Big Cypress Basin, application of the five operational zones, as set forth in subsection (7), above, will be reviewed on a case by case basis taking into account the width of overbank right of way, the accessibility of the right of way to land-based maintenance equipment and any site specific conditions that would impact the Basin's ability to operate and maintain the canal which is the subject of a particular application.

(9) The District reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities and relaxation of the restrictions in zones 2, 3, 4, and 5 may be allowed, such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further, the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area.

(10) The District has further determined that certain facilities and uses meeting specific minimum criteria for various right of way zones shall more efficiently be granted authorization with a limited review by District staff, since these specific facilities and uses do not adversely impact the District's ability to operate and maintain the District's right of way and works of the District. Such authorizations shall be administered by the provisions of Rules 40E-6.101 and 40E-6.121, F.A.C., as a notice general permit. The District will incur less expense in the review of notice general permit applications, and, therefore the application processing fee associated with such facilities and uses shall reflect accordingly, as set forth herein. If multiple uses are being requested and any of those uses require a standard permit, all authorizations shall be requested under the standard permit application and a notice general permit will not be required.

(11) In managing its canal and levee system the District must, from time to time, change its criteria and permit requirements based on regional and site specific conditions. Applicants are cautioned that the information provided by District staff is based on the best available information at the time the information is conveyed, but is subject to change. This is particularly true when applicants delay months or years in submitting an application for permit. Therefore the rules, criteria and requirements in effect at the time a formal application is received for review will be applied to the permit application.

Specific Authority 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.118, 373.129, 373.1395 FS. History–New 9-3-81, Formerly 16K-5.01(1), Amended 12-29-86, 9-15-99, 7-12-06.

40E-6.021 Definitions.

(1) The term "above ground facilities" when used in these rules is intended to mean any and all physical improvements or uses, whether man-made or natural (e.g. vegetation), that are extended above the existing surface of the ground.

(2) The term "change of ownership" when used in these rules is intended to mean the sale, purchase, or transfer of beneficial ownership of property adjacent to the District's right of way relative to a right of way occupancy permit; or in the case of utilities, bridges, or other such public facilities, the sale, purchase, or transfer of responsibility.

(3) The term "easement" when used in these rules is intended to mean the District's legal interest in the land for a specific limited use, such as construction, operation and maintenance of a canal or levee, access, stock piling of spoil material, or flowage of the land of another.

(4) The term "fee" ownership when used in these rules is intended to mean absolute and unconditional ownership by the District.

(5) The term "financial assurances" when used in these rules is intended to mean a cash bond to be held by the District in a non-interest bearing account, a performance bond issued by a licensed bonding company, a letter of credit issued by a financial institution authorized to do business in the State of Florida, or other such instrument approved by the District.

(6) The term "marina" when used in these rules is intended to mean a docking facility for four (4) or more watercraft.

(7) The term "modification" when used in these rules is intended to mean the addition or deletion of any facilities or uses not specifically authorized by the original permit.

(8) The term "notice general permit" when used in these rules is intended to mean a revocable license to occupy the works or lands of the District for specific types of proposed uses, with limited review by District staff, as set forth herein, and not requiring Governing Board approval.

(9) The term "owner" when used in these rules is intended to mean the individual or entity legally responsible for the ownership and control of the proposed facility or authorized use.

(10) The term "permit transfer" when used in these rules is intended to mean the changing of responsibility for the permit authorization from one person or entity to another.

(11) The term "right of way" when used in these rules is intended to mean those lands acquired by the District in fee, easement, or other type of grant, for the purpose of operations and maintenance of the District's canal and levee system, spoil areas, Stormwater Treatment Area's (STA's), and access and other easements.

(12) The term "right of way occupancy permit" when used in these rules is intended to mean a revocable license to occupy the works or lands of the District, either by a notice general permit or a standard permit.

(13) The term "STA" when used in these rules is intended to mean the District's Everglades Nutrient Removal Project ("ENR"), as well as those areas currently, or in the future, designated by the District as Stormwater Treatment Area's.

(14) The term "standard permit" when used in these rules is intended to mean a revocable license to occupy the works or lands of the District for all uses not covered by a notice general permit, with a full review by District staff, as set forth herein, and requiring Governing Board approval.

(15) The term "top of bank" when used in these rules is intended to mean the point at which the flat or nearly level ground surface transitions down to the channel along the side slope of the canal bank.

(16) The term "tree" when used in these rules is intended to mean not only the trunk of the tree, but the farthest part of the canopy of the tree at maturity as well.

(17) The term "utility" when used herein means companies actually providing essential water, electric, telephone, sewer, or natural gas services. All other services shall be considered non-essential.

(18) The term "violator" when used in these rules is intended to mean any persons or entities acting contrary to the provisions of Chapter 373, F.S., these rules, as well as the provisions of any permit issued pursuant to these rules.

(19) The term "Works of the District" when used in these rules is intended to mean the canals, levees, structures, lands, water bodies, and other associated facilities which have been adopted as such by the District's Governing Board.

(20) The term "Zone 1" when used in these rules is intended to mean the canal channel from the top of bank to the opposite top of bank, as depicted in Figure 1.

(21) The term "Zone 2" when used in these rules is intended to mean the point on the right of way from the top of bank to a point five (5) feet landward, as depicted in Figure 1.

(22) The term "Zone 3" when used in these rules is intended to mean the point on the right of way from a point five (5) feet

landward from top of bank to a point twenty (20) feet landward, as depicted in Figure 1.

(23) The term "Zone 4" when used in these rules is intended to mean the point on the right of way from a point twenty (2 landward from top of bank to a point forty (40) feet landward, as depicted in Figure 1.

(24) The term "Zone 5" when used in these rules is intended to mean any right of way located farther than forty (40) fee the top of bank, as depicted in Figure 1.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086 FS. History–New 9-15-99, Amended 7-12-06.

40E-6.031 Implementation.

(1) The effective date for the program established in this chapter is September 15, 1999.

(2) All permits issued prior to the effective date of these rules shall remain in effect, except as provided herein.

(3) All applications, and permit application processing fees, for permits received by the District prior to the effective date of these rules shall be processed using the criteria set forth in Volume V, Criteria Manual for Use of Works of the District – Permit Information Manual, adopted December 24, 1991.

(4) All applications, and permit application processing fees, received by the District on or after the effective date of these rules shall be subject to the provisions of these rules and the criteria adopted pursuant to these rules as set forth in Rule 40E-6.091, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086 FS. History–New 9-3-81, Amended 12-29-86, 9-15-99.

40E-6.041 Consent Required.

(1) Unless expressly exempt by law or District rule, a right of way occupancy permit, either a notice general permit or a standard permit, must be obtained prior to connecting with, placing structures in or across, discharging into or making use of the works of the District and any additional lands or real property interest owned by the District, including the Stormwater Treatment Areas (STA's). Works or lands of the District subject to this requirement appear in the document listed in Rule 40E-6.091, F.A.C.

(2) All other use and occupancy of District works or lands must be consistent with the purposes and objectives of Ch. 373, F.S. and Title 40E, F.A.C.

(3) These rules do not apply to property managed by the District pursuant to Chapter 40E-7, Part V, F.A.C., or the District's Real Estate Policy, except as otherwise limited by Rule 40E-6.221(8), F.A.C.

(4) These rules do not apply to the Seminole Tribe of Florida at such time as there exists a District approved agreement specifically addressing the use and management of District rights of way between the District and the Seminole Tribe of Florida.

(5) Except when works or lands of the District have been affirmatively opened to public vehicular use, a right of way occupancy permit must be obtained prior to traveling on or across such works or lands.

(6) A conceptual approval for the use of works of the District may be obtained by processing a right of way occupancy permit application in conjunction with the request for a letter of conceptual approval only if the letter of conceptual approval is requested pursuant to Section 380.06(9)(b), F.S.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 380.06(9)(b), 373.118 FS. History–New 9-3-81, Formerly 16K-5.01(1), 16K-5.10, Amended 7-1-86, 12-29-86, 12-24-91, 9-15-99.

40E-6.051 Exemptions.

(1) The following uses are exempt from permitting under this chapter where such facilities and uses comply with the criteria contained in the document listed in subsection 40E-6.091(1), F.A.C.:

(a) The planting or maintenance of native or drought and insect resistant turf grasses;

(b) Drain lines (pool, roof, air-conditioning);

(c) Low lying groundcover in certain zones;

(d) Irrigation lines, flush or pop-up sprinklers, draft lines; and

(e) Not-for-profit, organized boat races, regattas and similar activities.

(2) An exemption from these rules shall not relieve any person or entity from compliance with other District permit requirements and any applicable permit requirements of federal, state and local government.

(3) The District is not responsible for the repair of or claims of damage to any facilities and uses which may incur damage resulting from the District's utilization of its rights of way or use by third parties. Improvements placed within the right of way are done so at the sole risk of the owner.

(4) The District is not responsible for any personal injury or property damage which may directly or indirectly result from the use of water from the District's canal or any activities which may include use or contact with water from the District's canal, since the District periodically sprays its canals for aquatic weed control purposes and uses substances which may be harmful to human health or plant life.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086 FS. History–New 12-24-91, Amended 9-15-99, 7-12-06.

40E-6.091 Publications Incorporated by Reference.

(1) The "Basis of Review for Use or Occupancy of the Works or Lands of the District Permit Applications within the South Florida Water Management District – September 15, 1999", Which includes separate and distinct criteria developed to address the unique characteristics and operational needs of the respective areas for the Okeechobee Basin, the Big Cypress Basin, and the STA's, is hereby published by reference and incorporated into this chapter.

(2) District lands and works subject to this Chapter are adopted by the Governing Board in accordance with the provisions of Section 373.086, F.S. The District's lands and works are listed in the document referenced in subsection (1) and are hereby published by reference and incorporated into this Chapter.

(3) The document listed in subsection (1) is published by the District and available upon request.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 403.0877 FS. History–New 9-3-81, Formerly 16K-5.01(3), Amended 12-29-86, 12-24-91, 9-15-99, 2-12-06.

40E-6.101 Content of Application.

(1) Applications for permits required by this subpart shall be filed with the District. The applications shall contain the following information:

(a) Form NGP-1 "Application to the South Florida Water Management District for Right of Way Notice General Permit" effective date September 15, 1999, which is hereby incorporated by reference and which may be obtained at the South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida 33406;

(b) The applicant's name and address including zip code and phone number;

(c) All owner's names as appearing on the tax rolls, and complete address and phone numbers if applicant or user is other than the owner(s);

(d) The project location relative to County, Section, Township and Range; Lot, Block and Subdivision; or a metes and bounds description;

(e) Whether the proposed use is a modification, an existing use, or is a new use;

(f) A description of the proposed use of or encroachment on works or lands of the District to be used;

(g) A description of the proposed use of or encroachment on works or lands of the District and in which zone, as depicted in Figure 1, the proposed use will be located;

(h) Six copies of a scaled or fully dimensioned 8 1/2" × 11" drawing, reflecting the proposed use in plan and elevation views, related to the applicable work of the District, and tied to a known reference point in the immediate area of the proposed use. Larger drawings or aerial photographs shall be required, if necessary to adequately show the location and nature of the proposed use. A property survey, indicating the location of the District right-of-way boundary line shall also be provided.

1. All drawings shall utilize English units of measure or a combination of both English and metric units of measure. Vertical datum shall be National Geodetic Vertical Datum (1929), North American Vertical Datum (1988), or Mean Sea Level and the datum utilized shall be specified on the drawing(s).

2. All drawings for seawalls or bulkheads and subaqueous or pile-supported crossings shall be supported with cross sections of the existing channel. Unless waived or modified by the District pursuant to prior written request by the applicant, soundings for the cross sections shall be taken at 10 foot intervals from top of bank to top of bank and shall be tied to both canal/levee right of way lines. For subaqueous or pile-supported crossings a minimum of 3 cross sections shall be supplied by the applicant; one at the point where the proposed crossing crosses the centerline of the canal; and one each upstream and downstream of the crossing at points determined by the District. For seawall or bulkhead projects the District shall determine the number of cross sections required but said cross sections will be no more frequent than one cross section per every 25 feet of proposed bulkheading. Cross sections shall be plotted to the same horizontal and vertical scale using standard 10 x 10 cross section paper or similar CAD format. The cross sections shall have superimposed upon them the design section for the canal at the location and existing cross sectional area below the design water surface shall be accurately calculated by the applicant and printed on or adjacent to each cross section.

3. Except where exempt pursuant to Section 471.003, F.S., drawings for bridge crossings, bulkheads, seawall, retaining walls, hard shoreline stabilization and revetment installations shall be signed and sealed by a Florida registered professional engineer.

(i) Information sufficient to demonstrate that the proposed use meets the criteria established in the document referred to in Rule 40E-6.091, F.A.C.; and

(j) The estimated length of time needed for completion of the proposed work once construction has begun.

(2) Applications shall be signed by both the owner(s) and authorized agent, if applicable.

(3) Applications shall not be considered complete until such time as all required information as set forth in subsections (1) and (2), above, and insurance and financial assurances in accordance with Rule 40E-6.361, F.A.C., have been received by the District.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085(1), 373.086, 373.117, 373.118, 471.003 FS. History–New 9-3-81, Formerly 16K-5.04 (1), Amended 12-1-82, 12-29-86, 12-24-91, 9-15-99.

40E-6.121 Conditions for Issuance of Notice General Permits.

(1) The District has determined that certain uses shall be authorized under a notice general permit when the proposed location is in an authorized operational zone and the criteria established in the Basis of Review, incorporated by reference in 40E-6.091, F.A.C., have been met. These uses are set forth in the Permit Index Chart included in the Basis of Review. Any facilities currently existing cannot be authorized by a notice general permit and must receive authorization through the standard permit application process or be promptly removed from the District's right of way.

(2) Due to the nature of the projects, the following facilities and uses cannot be authorized by a Notice General Permit:

(a) Roadway and highway projects;

(b) Marinas and public boat launching facilities;

(c) Linear Parks;

(d) Permanent buildings and other above-ground structures;

(e) Crude oil and petroleum product pipelines;

(f) Other such facilities or uses.

(3) The District has determined that the proposed activity fully complies with all of the criteria set forth in Rule 40E-6.091, F.A.C.

(4) Except for utilities, both essential and non-essential, an applicant must own or lease the land adjacent to or served by the portion of the works or lands of the District involved.

(5) In addition to the requirements and restrictions set forth in subsections (1) to (4), the District, due to its proprietary interest in its lands and works, possesses and exercises all the rights and remedies available to owners of real property through statutory and common law.

(6) Any and all above ground facilities located within the clear 40 foot wide right of way, as set forth in Rule 40E-6.011(4), F.A.C., or within the right of way at locations where the right of way is less than 40 feet wide, as measured from the top of the canal bank, are prohibited.

(7) The notice general permit provisions of this rule are not intended to apply to the notice general permit provisions in District Chapter 40E-62, F.A.C.

(8) The limiting conditions set forth in Rule 40E-6.361, F.A.C., shall be incorporated into every Notice General Permit issued.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.118 FS. History–New 9-15-99.

40E-6.201 Content of Application.

(1) Applications for permits required by this Subpart shall be filed with the District. The standard permit application shall contain the following information:

(a) Form SP-1 "Application to the South Florida Water Management District" effective date September 15, 1999, which is hereby incorporated by reference and which may be obtained at the South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida 33406;

(b) The applicant's name and address including zip code and phone number;

(c) All owner's names, as appearing on the tax rolls, and complete address if applicant or user is other than the owner;

(d) The project location relative to County, Section, Township and Range; Lot, Block and Subdivision; or a metes and bounds description;

(e) A description of the portion of the works or lands of the District to be used;

(f) Whether the proposed use is a modification of an existing use, or is a new use;

(g) A description of the proposed use of or encroachment on works or lands of the District and in which zone, as depicted in Figure 1, the proposed use will be located;

(h) Six copies of a scaled or fully dimensioned 8 1/2" x 11" drawing, reflecting the proposed use in plan and elevation views, related to the applicable work of the District, and tied to a known reference point in the immediate area of the proposed use. Larger drawings or aerial photographs shall be required, if necessary to adequately show the location and nature of the proposed use. A property survey, indicating the location of the District right of way boundary line, shall also be provided.

1. All drawings shall utilize English units of measure or a combination of both English and metric units of measure. Vertical datum shall be National Geodetic Vertical Datum (1929), North American Vertical Datum (1988), or Mean Sea Level and the datum utilized shall be specified on the drawing(s).

2. All drawings for seawalls or bulkheads and subaqueous or pile-supported crossings shall be supported with cross sections of the existing channel. Unless waived or modified by the District pursuant to prior written request by the applicant, soundings for the cross sections shall be taken at 10 foot intervals from top of bank to top of bank and shall be tied to both canal/levee right of way lines. For subaqueous or pile supported crossings a minimum of 3 cross sections shall be supplied by the applicant; one at the point where the proposed crossing crosses the centerline of the canal; and one each upstream and downstream of the crossing at points determined by the District. For seawall or bulkhead projects the District shall determine the number of cross sections required but said cross sections will be no more frequent than one cross section per every 25 feet of proposed bulkheading. Cross sections shall be plotted to the same horizontal and vertical scale using standard 10 x 10 cross section paper or similar CAD format. The cross sections shall have superimposed upon them the design section for the canal at the location and existing cross sectional area below the design water surface shall be accurately calculated by the applicant and printed on or adjacent to each cross section.

3. Except where exempt pursuant to Section 471.003, F.S., drawings for bridge crossings, bulkheads, seawall, retaining walls, hard shoreline stabilization and revetment installations shall be signed and sealed by a Florida registered professional engineer.

(i) Information sufficient to demonstrate that the proposed use meets the criteria established in the document referred to in Rule 40E-6.091, F.A.C.; and

(j) The estimated length of time needed for completion of the proposed work once construction has begun.

(2) Applications shall be signed by both the owner(s) and authorized agent, if applicable.

(3) Applications shall not be considered complete until such time as all required information as set forth in subsections (1) and (2), above, and insurance and financial assurances in accordance with Rule 40E-6.361, F.A.C., have been received by the District.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085(1), 373.086, 373.117, 471.003 FS. History–New 9-15-99.

40E-6.221 Conditions for Issuance of Standard Permits.

(1) The District has determined that certain uses shall be authorized under a standard permit when located in an authorized zone and when they comply with the criteria established in the Basis of Review, incorporated by reference in Rule 40E-6.091, F.A.C. These uses are set forth in the Permit Index Chart included in the Basis of Review.

(2) In determining whether standard permit should be issued, the District shall consider whether the proposed activity unduly burdens the District's interests. In making this decision, the District shall weigh the following critical factors:

(a) Interferes with the present or future construction, alteration, operation or maintenance of the works or lands of the District;

(b) Is consistent with the policy and objectives of Chapter 373, F.S., including the legislative declaration of policy contained in Section 373.016, F.S.

(c) Has an actual or potential negative impact upon environmentally sensitive areas, which include: wetlands; endangered or threatened species habitat; aquatic preserves; Outstanding Florida Waters; Class I or Class II waters; federal, state and privately owned parks and wildlife management areas; designated areas of critical state concern; lands purchased by federal, state and local governments for the purpose of environmental protection, water resource protection and aesthetics; and lands which contain native terrestrial plant species in significant amounts. Environmentally sensitive areas include areas on and off-site that are affected by activities which occur on, or are initiated from, the works of the District;

(d) Degrades water quality within the receiving water body or fails to meet the provisions of Ch. 373, F.S., the state water policy, and Title 40E, F.A.C.;

(e) Involves a discharge of wastewater from a new wastewater source or an increased discharge from an existing wastewater source;

(f) Will discharge debris or aquatic weeds into works of the District or cause erosion or shoaling within the works of the District;

(g) Is supported by financial assurances, which will ensure that the proposed activity will be conducted in accordance with Chapter 373, F.S. and Chapter 40E-6, F.A.C.;

(h) Interferes with scientific activities;

(i) Presents an increased liability risk to the District;

(j) Meets the general and specific criteria in the Basis of Review which is incorporated by reference in Rule 40E-6.091, F.A.C.;

(k) Interferes with actual or potential public use of the District's works or lands, including public recreational or other facilities not within the District's works;

(l) Meets applicable criteria in Chapters 40E-61 and 40E-62; F.A.C.

(m) The natures of the District's property interest.

(3) The District shall consider a permit applicant's past and present violation of any District rules or permit conditions, including enforcement action, when determining whether the applicant has provided reasonable assurances that District standards will be met.

(4) Activities which can be carried out through the District's real property acquisition and disposal policy will not be eligible for a permit under this chapter.

(5) The District shall also consider the cumulative impact of allowing the proposed use. Based upon the cumulative impact of allowing similar uses in the affected area, the District shall deny uses which appear insignificant with regard to the above criteria if the cumulative impact is significant.

(6) The structural integrity of bridges across District works or lands shall be certified by a professional engineer registered in the State of Florida, except as provided in Section 471.003, F.S.

(7) In those instances where the District does not own the underlying fee simple title, applicants may be required to show the necessary legal interest from the owner of the underlying fee. The District does not, however, assume any duty to protect the legal rights of the underlying fee owner.

(8) No commercial uses will be allowed on District rights of way. There shall, however, be no presumption against allowing commercial use of the District right of way by utilities.

(9) Except for utilities, both essential and non-essential, an applicant must own or lease the land adjacent to or served by the portion of the works or lands of the District involved.

(10) In addition to the requirements and restrictions set forth in subsections (1) through (9), the District, due to its proprietary interest in its lands and works, possesses and exercises all the rights and remedies available to owners of real property through

statutory and common law.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.117, 471.003 FS. History-New 9-15-99.

40E-6.321 Duration of Permits.

(1) Permits issued prior to the effective date of September 15, 1999 and which do not comply with the Basis of Review incorporated by reference in Rule 40E-6.091, F.A.C., shall expire upon the change of ownership of the property unless transferred pursuant to Rule 40E-6.351, F.A.C, below. These authorizations shall not be transferred to a new property owner and must be immediately removed from the District's right of way unless a new permit application has been submitted and approved by the District.

(2) Unless revoked or otherwise modified the duration of a right of way occupancy permit is:

(a) As set forth in the permit, including the special conditions to the permit; or

(b) After construction is complete, perpetual, unless revoked.

(3) Permits authorizing construction expire automatically on the date indicated on the face of the permit, unless a written request for extension is received by the District on or before the expiration date. If an extension has not been requested prior to the expiration of the permit, a new application, including the application processing fee, must be submitted. Upon the expiration of a permit, all construction activities must cease until the new permit has been issued. Extensions of the construction period may be granted administratively, or in cases involving litigation, environmental, water resource, or other impact, shall be referred to the Governing Board for final action. The District shall decline to extend a permit authorizing construction if the proposed use is no longer consistent with the objectives of the District or other provisions of these rules.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086 FS. History–New 9-3-81, Formerly 16K-5.07, Amended 12-29-86, 9-15-99.

40E-6.331 Modification of Permits.

(1) Applications for permit modifications required by this chapter shall be filed by formal application, including the permit modification application fee, with the District.

(2) Applications for modification to permitted uses shall be reviewed using the same criteria as new applications, pursuant to Rules 40E-6.091, 40E-6.121, and 40E-6.221, F.A.C.

(3) Letter modifications may be issued by District staff, provided the requested modification:

(a) Does not substantially alter the permit authorization;

(b) Does not interfere with construction, operation and maintenance of District lands or works; and

(c) Is otherwise consistent with the purposes and policies of Chapter 373, F.S. and Chapter 40E-6, F.A.C.

(4) Under Sections 373.083 and 373.085, F.S., the District is authorized to modify a permit when it determines that the currently permitted use has become inconsistent with the factors and conditions enumerated in Rules 40E-6.121 and 40E-6.221, F.A.C.

(5) Permit modifications may be initiated by the District in accordance with the provisions of Chapter 40E-1, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.085, 373.086 FS. History–New 9-3-81, Formerly 16K-5.11(1), Amended 12-29-86, 12-24-91, 9-15-99.

40E-6.341 Revocation of Permits.

(1) Under Sections 373.083 and 373.085, F.S., the District is authorized to revoke a right of way occupancy permit under any of the following circumstances:

(a) The permittee or his agent has committed any of the acts enumerated in Rule 40E-1.609, F.A.C.;

(b) The permitted use interferes or will interfere with the construction, alteration, operation, or maintenance of present or proposed works or lands of the District;

(c) The permittee has failed to immediately comply with an emergency or other order issued pursuant to Rules 40E-1.611 and 28-107.005, F.A.C.;

(d) The permitted use is no longer consistent with the factors and conditions enumerated in Rules 40E-6.121 and 40E-6.221, F.A.C., The provisions of Chapter 373, F.S., Title 40E, F.A.C., and the state water policy, Chapter 62-40, F.A.C;

(e) The permitted use is inconsistent with any provision of this rule, or any subsequent revisions to this rule, including any provision of the Basis of Review, incorporated by reference in Rule 40E-6.091, F.A.C.; or

(f) The permitted use is no longer consistent with District policy, based upon a change in District policy.

(2) Right of Way Occupancy permits are subject to immediate revocation by the District's Executive Director with the concurrence of the Governing Board if an emergency condition exists and the continued exercise of the permit might endanger lives, human safety or property.

(3) Revocations for reasons specified in subsection (1) shall be conducted in accordance with the procedures specified in Rules 40E-1.609 and 28-107.004, F.A.C. Emergency revocations under subsection (2) shall be conducted in accordance with the procedures specified in Rule 28-107.005, F.A.C.

(4) The provisions herein shall take precedence over the general revocation provisions set forth in Rule 40E-1.609(1)(a) through (e), F.A.C., as the permit program governing use of works and lands of the District is a proprietary based program. To the extent there is any conflict between the general provisions of Chapter 40E-1, F.A.C., the specific provisions of Chapter 40E-6, F.A.C., shall prevail.

Specific Authority 373.044, 373.113 FS. Law Implemented 120.60(5), 373.085, 373.086, 373.129 FS. History–New 9-3-81, Formerly 16K-5.07(3), (4), Amended 12-29-86, 12-24-91, 9-15-99.

40E-6.351 Transfer of Permits.

(1) As the District has no control over the sale or transfer of real or personal property, it is the sole obligation of a permittee to disclose the existence of a Right of Way Occupancy Permit, its terms and conditions, to prospective purchasers.

(2) Right of Way Occupancy Permits shall be transferred when:

(a) The request is otherwise consistent with the provisions of these rules and Chapter 373, F.S.

(b) The applicant demonstrates that the permitted use still qualifies for a permit under Rules 40E-6.121 or 40E-6.221, F.A.C.

(c) The applicant agrees to abide by the provisions of Chapter 373, F.S., this chapter, and the terms and conditions of the permit, including these rules, including the standard limiting conditions, and criteria which are applicable at the time of the request for transfer.

(d) The adjoining land use has not changed.

(e) The request for transfer is accompanied, when required, with the correct fee.

(f) The applicant agrees to record a Notice of Permit in the official records of the county clerk's office as specified by the District.

(g) In cases where unauthorized facilities or uses have been added that are not included in the permit authorization, a permit transfer request must also be accompanied by a request for modification pursuant to Rule 40E-6.331, F.A.C.

(3) Right of Way Occupancy Permits will be transferred without a fee when the request for transfer is received within twelve (12) months from the change of ownership, as evidenced by the date of transfer of ownership appearing in the deed or other instrument of conveyance.

(4) Requests for transfer of Right of Way Occupancy Permits shall be assessed a fifty ($50.00) dollar processing fee when the request is received by the District more than twelve (12) months from the date of change of ownership but prior to eighteen (18) months from the change of ownership, as evidenced by the date of transfer of ownership appearing in the deed or other instrument of conveyance.

(5) Transfers requested more than 18 months from the date of change of ownership shall be denied and require the submission of an application and the appropriate application processing fee.

(6) All transfers require a field inspection and shall not become effective until such inspection is conducted and confirms all existing facilities are permitted and all uses comply with the criteria in Rule 40E-6.091, F.A.C., and the conditions of issuance in Rules 40E-6.121 or 40E-6.221, F.A.C. If additional facilities are present, no transfer will be allowed unless the unauthorized facility or use is removed immediately and the right of way restored. Applicants must submit a new standard permit application, along with the appropriate application processing fee, for all additional facilities not removed and not currently authorized by a Right of Way Occupancy Permit.

(7) The District staff shall not issue transfers until all financial assurance and insurance requirements, if any, have been provided and accepted by the District staff.

Specific Authority 373.044, 373.109, 373.113 FS. Law Implemented 373.085, 373.086, 373.109 FS. History–New 9-3-81, Formerly 16K-5.10, 16K-5.11(2), 16K-5.12, Amended 12-29-86, 9-15-99.

40E-6.361 Financial Assurances and Insurance.

(1) The District shall require the applicant requesting a right of way occupancy permit to provide and maintain financial assurances to the District and its successors, in the form of a cash bond to be held by the District in a non-interest bearing account, a performance bond issued by a licensed bonding company, a letter of credit issued by a financial institution authorized to do business in the State of Florida, or other such instrument approved by the District to ensure full compliance with terms of the permit, including the proper construction, operation, and maintenance of the facility. The amount and type of financial assurance shall be determined by the District.

(a) In instances where the District authorizes use of its rights of way as a temporary haul or access road, which does not include crossing over District structures or associated facilities, the amount of the financial assurance shall be Five Thousand ($5,000.00) Dollars per half mile or multiple thereof, with a minimum amount of Five Thousand ($5,000.00) Dollars.

(b) In instances where the District authorizes the construction of a private bridge on or across the District's right of way, the amount of the financial assurance shall be based upon a professional engineer's or certified demolition company's itemized estimate, to be provided by and paid for by the applicant, of the cost of the demolition of the bridge, removal of the debris, and restoration of the right of way. Such estimates shall be reviewed and approved by District staff.

(c) In instances where the District authorizes the installation of a water or sewer force main installation on or across the District's right of way other than those constructed by governmental entities, the amount of the financial assurance shall be based upon a professional engineer's or certified demolition company's itemized estimate, to be provided by and paid for by the applicant, of the cost of the demolition of the water or sewer force mains, removal of the debris, and restoration of the right of way. Such estimates shall be reviewed and approved by District staff. Upon acceptance by the governmental entity of the facility and the issuance of a permit transfer by District staff, such financial assurances shall be released.

(d) Any other uses of the District's right of way authorized by the District are subject to adequate financial assurances as determined necessary and reasonable by District staff based upon a complete review of the unique circumstances and the potential liability, both personal injury and property damage, and environmental risks involved with the specific authorized use.

(2) In addition to the provision for financial assurances as provided in subsection (1), above, the District shall require liability insurance, naming the District as an additional insured, in such amount and type as the District staff determines necessary. All insurance must be written by a company duly authorized to do business in the State of Florida or provided pursuant to a self insurance program consistent with the requirements of Florida law.

(3) Any applicable financial assurance or insurance requirement set forth above shall be maintained as a condition of the continued validity of the right of way occupancy permit.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.103 FS. History–New 9-15-99.

40E-6.381 Limiting Conditions.

The District's authorization to utilize lands and other works constitutes a revocable license (including both notice general permits and standard permits). In consideration for receipt of that license, permittees shall agree to be bound by the following standard limiting conditions, which shall be included within all permits issued pursuant to this chapter:

(1) All structures on District works or lands constructed by permittee shall remain the property of permittee, who shall be solely responsible for ensuring that such structures and other uses remain in good and safe condition. Permittees are advised that other federal, state and local safety standards may govern the occupancy and use of the District's lands and works. The District assumes no duty with regard to ensuring that such uses are so maintained and assumes no liability with regard to injuries caused to others by any such failure.

(2) Permittee solely acknowledges and accepts the duty and all associated responsibilities to incorporate safety features, which meet applicable engineering practice and accepted industry standards, into the design, construction, operation and continued maintenance of the permitted facilities/authorized use. This duty shall include, but not be limited to, permittee's consideration of the District's regulation and potential fluctuation, without notice, of water levels in canals and works, as well as the permittee's consideration of upgrades and modifications to the permitted facilities/authorized use which may be necessary to meet any future changes to applicable engineering practice and accepted industry standards. Permittee acknowledges that the District's review and issuance of this permit, including, but not limited to, any field inspections performed by the District, does not in any way consider or ensure that the permitted facilities/authorized use is planned, designed, engineered, constructed, or will be operated, maintained or modified so as to meet applicable engineering practice and accepted industry standards, or otherwise provide any safety protections. Permittee further acknowledges that any inquiries, discussions, or representations, whether verbal or written, by or with any District staff or representative during the permit review and issuance process, including, but not limited to, any field inspections, shall not in any way be relied upon by permittee as the District's assumption of any duty to incorporate safety features, as set forth above, and shall also not be relied upon by permittee in order to meet permittee's duty to incorporate safety features, as set forth above.

(3) Permittee agrees to abide by all of the terms and conditions of this permit, including any representations made on the permit application and related documents. This permit shall be subject to the requirements of Chapter 373, F.S., and Chapter 40E-6, F.A.C., including all subsequent rule and criteria revisions. Permittee agrees to pay all removal and restoration costs, investigative costs, court costs and reasonable attorney's fees, including appeals, resulting from any action taken by the District to obtain compliance with the conditions of the permit or removal of the permitted use. If District legal action is taken by staff counsel, "reasonable attorney's fees" is understood to mean the fair market value of the services provided, based upon what a private attorney would charge.

(4) This permit does not create any vested rights, and except for governmental entities and utilities, is revocable at will upon reasonable prior written notice. Permittee bears all risk of loss as to monies expended in furtherance of the permitted use. Upon revocation, the permittee shall promptly modify, relocate or remove the permitted use and properly restore the right of way to the District's satisfaction. In the event of failure to so comply within the specified time, the District may remove the permitted use and permittee shall be responsible for all removal and restoration costs.

(5) This permit does not convey any property rights nor any rights or privileges other than those specified herein and this permit shall not, in any way, be construed as an abandonment or any other such impairment or disposition of the District's property rights. The District approves the permitted use only to the extent of its interest in the works of the District. Permittee shall obtain all other necessary federal, state, local, special district and private authorizations prior to the start of any construction or alteration authorized by the permit. Permittee shall comply with any more stringent conditions or provisions which may be set forth in other required permits or other authorizations. The District, however, assumes no duty to ensure that any such authorizations have been obtained or to protect the legal rights of the underlying fee owner, in those instances where the District owns less than fee.

(6) Unless specifically prohibited or limited by statute, Permittee agrees to indemnify, defend and save the District (which used herein includes the District and its past, present and/or future employees, agents, representatives, officers and/or Governing Board members and any of their successors and assigns) from and against any and all lawsuits, actions, claims, demands, losses, expenses, costs, attorneys fees (including but not limited to the fair market value of the District's inhouse attorneys' fees based upon private attorneys' fees/rates), judgments and liabilities which arise from or may be related to the ownership, construction, maintenance or operation of the permitted use or the possession, utilization, maintenance, occupancy or ingress and egress of the District's right of way which arise directly or indirectly and are caused in whole or in part by the acts, omissions or negligence of the District or of third parties. Permittee agrees to provide legal counsel acceptable to the District if requested for the defense of any such claims.

(7) The District does not waive sovereign immunity in any respect.

(8) The permittee shall not engage in any activity regarding the permitted use which interferes with the construction, alteration, maintenance or operation of the works of the District, including:

(a) Discharge of debris or aquatic weeds into the works of the District;

(b) Causing erosion or shoaling within the works of the District;

(c) Planting trees or shrubs or erecting structures which limit or prohibit access by District equipment and vehicles, except as may be authorized by the permit. Permittee shall be responsible for any costs incurred by the District resulting from any such interference, as set forth in (a), (b), and (c), above.

(d) Leaving construction or other debris on the District's right of way or waterway;

(e) Damaging District berms and levees;

(f) The removal of District owned spoil material;

(g) Removal of or damage to District locks, gates, and fencing;

(h) Opening of District rights of way to unauthorized vehicular access; or

(i) Running or allowing livestock on the District's right of way.

(9) The District is not responsible for any personal injury or property damage which may directly or indirectly result from the use of water from the District's canal or any activities which may include use or contact with water from the District's canal, since the District periodically sprays its canals for aquatic weed control purposes and uses substances which may be harmful to human health or plant life.

(10) Permittee shall allow the District to inspect the permitted use at any reasonable time.

(11) Permittee shall allow, without charge or any interference, the District, its employees, agents, and contractors, to utilize the permitted facilities before, during and after construction for the purpose of conducting the District's, routine and emergency, canal operation, maintenance, and construction activities. To the extent there is any conflicting use, the District's use shall have priority over the permittee's use.

(12) This permit is a non-exclusive revocable license. Permittee shall not interfere with any other existing or future permitted uses or facilities authorized by the District.

(13) The District has the right to change, regulate, limit, schedule, or suspend discharges into, or withdrawals from, works of the District in accordance with criteria established by the Big Cypress Basin, the District, or the U. S. Army Corps of Engineers for the works of the District.

(14) If the use involves the construction of facilities for a non exempt water withdrawal or surface water discharge, the applicant must apply for and obtain a water use or surface water management permit before or concurrently with any activities which may be conducted pursuant to the right of way occupancy permit.

(15) The District shall notify the local ad valorem taxing authority of the lands affected by the permitted use, where the permittee owns the underlying fee and derives a substantial benefit from the permitted use. The taxing authority may reinstate such lands on the tax roll. Failure to pay all taxes in a timely manner shall result in permit revocation. Such permit revocation shall not alleviate the responsibility of the permittee to pay all taxes due and payable.

(16) Permittee shall provide prior written notice to their successors in title of the permit and its terms and conditions.

(17) Permittee shall record a Notice of Permit through filing the appropriate notice agreed to by the District in the public records of the county or counties where the project is located and by providing the District with proof of filing or through an equivalent procedure. All costs associated with this requirement shall be the responsibility of the permittee. Governmental entities and utilities are not subject to this provision.

(18) This permit is contingent upon compliance with the recording of the Notice of Permit. Failure to provide proof of the recording of the Notice of Permit will result in the permit becoming invalid on its own terms, the removal of any existing facilities within the right of way, restoration of the right of way to the District's satisfaction, at the permittee's expense, and the possible assessment of civil penalties.

(19) Permittee shall be responsible for the repair or replacement of any existing facilities located within the District's right of way which are damaged as a result of the installation or maintenance of the authorized facility.

(20) All obligations under the terms of this permit authorization and any subsequent modifications hereto shall be joint and several as to all owners.

(21) It is the responsibility of the permittee to make prospective bidders aware of the terms and conditions of this permit. It shall

be the responsibility of the permittee's contractors to understand the terms and conditions of this permit and govern themselves accordingly.

(22) It is the responsibility of the permittee to bring to the attention of the District any conflict in the permit authorization or permit conditions in order that they may be resolved prior to the start of construction. In resolving such conflicts the District's determination will be final.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085(1), 373.086, 373.103, 373.109, 373.129, 373.1395, 373.603, 373.609, 373.613 FS. History–New 9-3-81, Formerly 16K-5.01(2), 16K-5.02(2), 16K-5.03(2), 16K-5.04(4), 16K-5.05, Amended 5-30-82, 12-29-86, 12-24-91, 9-15-99.

40E-6.451 Emergency Authorization.

(1) Permission to begin use of works or lands of the District prior to the issuance of a permit shall be granted pursuant to Rule 40E-1.6115 and 40E-0.108, F.A.C.

(2) All requests for emergency authorizations must be submitted with both the emergency application processing fee set forth in Rule 40E-6.601(2)(h), F.A.C., in addition to the applicable standard permit application processing fee set forth in Rules 40E-6.601(2)(d) through (g), F.A.C.

(3) In order to be eligible for an emergency permit authorization the applicant must have already filed a standard permit application with the District or simultaneously file a standard permit application with the District.

(4) In addition to the required standard permit application contents, the applicant must also file a written statement with the District which fully explains the basis and circumstances which support and justify the request for emergency authorization.

(5) Mere carelessness or lack of planning on the part of the applicant shall not be sufficient grounds to warrant the granting of an emergency authorization.

(6) The Executive Director may grant an emergency authorization pursuant to Section 373.119(2), F.S.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.119, 373.439 FS. History–New 9-3-81, Formerly 16K-5.09, Amended 12-29-86, 7-1-98, 9-15-99.

40E-6.481 Emergency Measures.

(1) In addition to the provisions of Rule 40E-6.521, F.A.C., permitted uses are also subject to immediate alteration, repair or removal if an emergency condition exists and the continued exercise of the permitted use might endanger lives or property.

(2) In such event the permittee shall immediately comply with any written or oral instructions from the District regarding alteration, repair or removal of the permitted use.

(3) If the permittee fails to remove, alter or repair a permitted use when so ordered by the District, the District may repair, alter or remove it at the permittee's expense.

(4) Permittee may request an administrative hearing regarding the emergency order in accordance with the procedures set forth in Rule 28-107.004, F.A.C.

(5) In addition to the provision of Rule 40E-6.521, F.A.C., unpermitted uses are also subject to the provisions of this section.

(6) In no circumstances shall the District be responsible for any claims or damages caused in whole or in part, from any necessary emergency removal, alteration, or repair of any permitted or unpermitted use.

(7) All permitted and unpermitted uses are subject to the specific terms of an Emergency Order(s) which may be issued by the District.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086, 373.119, 373.439 FS. History–New 9-3-81, Formerly 16K-5.08, Amended 12-29-86, 7-2-98, 9-15-99.

40E-6.501 Unlawful Use and Civil Penalties.

(1) It shall be unlawful to connect with, place structures in or across, or otherwise make use of works or lands of the District without a Right of Way Occupancy Permit. The District may use any remedy available to it under Florida common law and statutory law and the District's rules, to remove or cause the unpermitted use to be removed, as well as the assessment of civil penalties pursuant to this rule.

(2) It shall be unlawful for any permittee to violate the provisions of Chapter 373, F.S., Chapter 40E-6, F.A.C., or the terms and conditions of a Right of Way Occupancy Permit. The District shall use any remedy available to it under Florida common law and statutory law and the District's rules, to remove or cause the unpermitted use to be removed, as well as the assessment of civil penalties pursuant to this rule. The District shall, in furtherance of the purposes of Chapter 373, F.S., allow the permitted use to be brought into compliance with the permit by means of a permit modification if the unlawful use complies with the criteria set forth in Rule 40E-6.091, F.A.C.

(3) Damage to works or lands of the District resulting from the violations specified in subsections (1) and (2), above, shall, within the timeframes and in a manner consistent with the District's requirements, be repaired by the violator to the satisfaction of the District, however, the District reserves the right to make any and all necessary repairs, the full cost of which shall be the responsibility of the violator.

(4) Violators shall be responsible for payment of civil penalties up to $10,000.00 per day, per violation, pursuant to Section 373.129, F.S., investigative costs and the District's attorney's fees (including appeals).

(5) Factors considered in the assessment of civil penalties shall be:

(a) Habitual violator;

(b) Threat to health, safety, and welfare (flooding);

(c) Immediacy of threat;

(d) Severity of impact (size of drainage basin);

(e) Potential for damage to surrounding property;

(f) Threat to District staff if self-help used

(g) Exposure of District to other liabilities;

(h) Environmental impact;

(i) Water quality; and

(j) Unusual circumstances.

(6) Vessels which are being occupied or used as a temporary or permanent residence or business, or other vessels which have an adverse impact on the District's ability to construct, operate, and maintain its canals and structures, will not be permitted within District works or lands. However, this limitation shall not be construed to prohibit vessels which are actively navigating from place to place.

(7) The planting of any non-native vegetation not included on the District's designated plant list or specifically authorized by District permit within District works or lands will not be permitted.

(8) The abandonment of personal property within District works or lands will not be permitted.

(9) Use of the works or lands of the District as a temporary or permanent place of residence or shelter will not be permitted.

(10) It shall be unlawful for any person or entity to remove any spoil, without authorization from the District, and the District specifically reserves any and all rights to pursue such violations in both criminal and civil proceedings, in addition to the provisions contained herein.

Specific Authority 373.044, 373.113, 373.129 FS. Law Implemented 373.085, 373.086, 373.603, 373.609, 373.613 FS. History–New 9-15-99.

40E-6.521 Self Help.

(1) Unlawful uses or facilities placed within the works or lands of the District are subject to removal and restoration at the District's discretion with no guarantee of salvageability. In no circumstances shall the District be responsible for any claims or damages caused, in whole or in part, from any self help removal and restoration of any unlawful uses or facilities.

(2) When employing self help, the District is not required to provide any notice of its intended action.

(3) The District may seek to recover removal and restoration costs, investigative costs, and attorneys fees and costs (including appeals) incurred in carrying out self help done to resolve the unlawful use of District works and lands.

Specific Authority 373.044, 373.113, 373.129 FS. Law Implemented 373.085, 373.086, 373.603, 373.609, 373.613 FS. History–New 9-15-99.

40E-6.601 Permit Application Processing Fees.

(1) A permit application processing fee is required and shall be paid to the District when applications are filed pursuant to District rules to connect with and make use of the works and lands of the District. An application is not deemed complete and shall not be processed until the appropriate application fee is submitted. These fees are assessed in order to defray the cost of evaluating, processing, and mailing required in connection with consideration of such applications. Fees are non-refundable in whole or part unless the activity for which an application is filed is determined by the District to be exempt or the fee submitted is determined by the District to be incorrect.

(2) Based upon years of experience in reviewing applications for District right of way occupancy permits, the District has determined that applications for existing facilities or uses require additional staff time and resources (as compared to proposed facilities) in order to thoroughly review and inspect, and this differential shall be reflected in the application processing fees for all right of way occupancy permit authorizations as set forth herein.

(3) The fee for permit applications reviewed pursuant to Chapter 40E-6, F.A.C., are as follows:

(a) Notice General Permit Application, Notice General Permit Modification Application relating to a single family residential use (Category NGP-1) – No Fee

(b) Notice General Permit Application, Notice General Permit Modification Application for uses proposed by homeowners associations and condominium associations relating to more than one individual lot or dwelling unit (Category NGP-2) – $150.00

(c) Notice General Permit Application, Notice General Permit Modification Application for uses proposed by developers, builders, corporate entities, utilities, county, state, or local entities (Category NGP-3) – $300.00

(d) Notice General Permit Application, Notice General Permit Modification Application relating to bridges, excluding culvert bridges (Category NGP-4) – $900.00

(e) Standard Permit Application, Standard Permit Modification Application relating to a single family residential use which does not meet Notice General Permit Criteria (Category SP-1) – $75.00

(f) Standard Permit Application, Standard Permit Modification Application relating to uses by homeowners associations and condominium associations and do not meet Notice General Permit Criteria (Category SP-2) – $300.00

(g) Standard Permit Application, Standard Permit Modification Application relating to uses by developers, builders, corporate entities, utilities, county, state, or local entities, as well as all other uses not covered in Categories SP-1, SP-2 and SP-4 (Category SP-3) – $625.00

(h) Standard Permit Application, Standard Permit Modification Application relating to uses involving bridges, linear parks, greenways, similar park and recreation projects, marinas and associated facilities (Category SP-4) – $1750.00

(i) Application for emergency authorization pursuant to Rule 40E-6.401, F.A.C. – $275.00

(j) Transfer Fees are set forth in Rule 40E-6.351, F.A.C., above.

(4) Notwithstanding the provisions set forth in this rule, upon request, the District shall waive any and all right of way occupancy permit application processing fees for right of way occupancy permit applications submitted by the governing body of a governmental entity only if provided with a resolution or other documentation as to the reciprocity commitment of the respective governmental entity applying for the right of way occupancy permit and clearly establishing that governmental entity's reciprocal waiver of any and all fees required for the District to carry out canal operation, maintenance, and construction activities for the District.

(5) Notwithstanding the provisions set forth in this rule, no permit application processing fee will be required from utilities or other necessary service providers, where the permitted facility or use of the works or lands of the District is required to supply utility or other necessary service to an existing or proposed District facility.

(6) The above permit application processing fees shall not apply to either the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida for facilities and uses located exclusively within the boundaries of their respective reservations or included in leases with the District.

Specific Authority 373.044, 373.109, 373.113 FS. Law Implemented 373.109, 373.085, 373.086 FS. History–New 9-15-99.