

## Lower West Coast Partnering Session



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Administrator

## **Environmental Resource Permitting (ERP)**

Laura Layman- Section Leader, Regulation

Lucy Blair- FDEP Environmental Administrator

# Agenda

- **Overview of ERP rules for docks and other shoreline facilities:**
  - **FDEP/SFWMD Operating Agreement**
  - **Exemptions**
  - **Noticed General Permits**
  - **ERP submittal requirements and rule criteria**
  - **Overview of Sovereign Submerged Lands**
  
- **General Regulatory Updates**
- **Topics for Future Discussion**

## Regulatory Basis for ERP Program

- The State of Florida regulates activities in, on, or over wetlands and other surface waters through the ERP Program pursuant to Part IV of Chapter 373 Florida Statutes (F.S.)
- The SFWMD adopted rules (Florida Administrative Code or F.A.C.) to implement the ERP Program, including:
  - 40E-4- Environmental Resource Permits
  - 40E-40- Environmental Resource Standard General Permits
  - 40E-400- No Notice and Noticed General Permits

## Regulatory Guidance



- **SFWMD Volume IV Manual**
- **SFWMD Basis of Review: identifies permit review criteria and information used by District staff when reviewing permit applications.**
- **Multiple guidance documents, forms, rule criteria, etc. are available on both the FDEP and SFWMD websites.**

<http://my.sfwmd.gov>

<http://www.dep.state.fl.us>

- **Operating Agreement between FDEP and the SFWMD (division of permitting responsibilities)**

# SFWMD ERP Homepage

Environmental Resource Permits - Microsoft Internet Explorer provided by SFWMD

http://my.sfwmd.gov/portal/page/portal/xweb%20-%20release%202012/environmental%20resource%20permitting

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Environmental Resource Permits

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**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

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Home >> Businesses >> Permits >> ENVIRONMENTAL RESOURCE PERMITS

## Environmental Resource Permits

Click your area on map for permit submittal locations. Details below.

### Permit Submittal Locations

- ▶ Broward
- ▶ Charlotte
- ▶ Collier
- ▶ Glades
- ▶ Hendry
- ▶ Highlands
- ▶ Lee
- ▶ Martin
- ▶ Miami-Dade
- ▶ Monroe

**Click here to apply, search or subscribe**

### RELATED LINKS

- ▶ ePermitting (apply for new or search existing permits)
- ▶ Environmental Resource Permitting Forms
- ▶ Environmental Resource Permitting Fees
- ▶ Environmental Resource Permit Information Manual Volume IV (27MB PDF) (updated September 2011)
- ▶ ERP Basis of Review [PDF] (updated August 20, 2010)
- ▶ Consumptive Water Use Permits
- ▶ Inter-District Permitting Portal
- ▶ Regulatory Guidance Publications
- ▶ FAQs [PDF]

Any activity that could affect wetlands, alter surface water flows or contribute to water pollution requires an Environmental Resource Permit (ERP). The South Florida Water Management District regulates residential and commercial developments, while the Florida Department of Environmental Protection oversees power plants, wastewater treatment plants and single-family home projects.

This type of permit is needed for:

- ▶ Dredging and filling in wetlands
- ▶ Constructing flood protection facilities
- ▶ Providing storm water containment and treatment
- ▶ Site grading
- ▶ Building dams or reservoirs
- ▶ Other activities affecting state waters

There are three types of ERP's: noticed general, standard general and individual. Noticed general permits and standard general permits are authorized by District staff. Individual permits are issued by the District's Executive Director. See chapters 40E-0, 40E-1, 40E-4, 40E-

### In the News

- ▶ Water Watch Briefing for October 31, 2011 (Oct 31)
- ▶ South Florida Water Managers Take Steps to Increase Water Storage (Oct 14)
- ▶ SFWMD Welcomes Dutch Officials (Sep 22)
- ▶ August Rainfall Improves Drought Conditions in Most Areas (Sep 02)
- ▶ Statement by Joe Collins Re: SFWMD Fiscal Year 2012 Budget (Aug 24)

NEWS ARCHIVE

### Online ePermitting Services

LEARN MORE ▶

### Related Contacts

- ▶ Application Receipt & Permit Fees
- ▶ Application Status
- ▶ Governing Board Agenda
- ▶ Legal and Institutional
- ▶ Permit Copies
- ▶ ePermitting
- ▶ Permit Transfers

Internet 100%

## SFWMD/DEP Operating Agreement



- **Identifies which agency will process a given application**
  - Revised/updated in July 2007
  
- **SFWMD generally takes action on:**
  - Docking facilities, boardwalks, shore protection structures, piers and navigational dredging, if they are related to a commercial or residential development.
  - Docking facilities associated with waterfront condominiums or apartments that were authorized pursuant to Chapter 40E-400.315 (No-Notice General Permit for Activities in Uplands)

# SFWMD/DEP Operating Agreement



- **FDEP generally takes action on:**
  - Docking facilities and dredging that are not part of a larger plan of residential or commercial development
  - Navigational dredging conducted by government agencies
  - Systems serving up to three contiguous parcels of land under single ownership, where each parcel contains only one single family dwelling unit, duplex, triplex or quadruplex
  - Systems located in whole or in part seaward of the CCCL
  - Seaports (port authority projects)
  - Other miscellaneous water-related activities (boat ramps, mooring buoys, artificial reefs)



## General ERP Process



- ERP program operates *in addition* to the federal Clean Water Act that regulates activities in waters of the United States.
  
- Joint Permit Application is submitted for an ERP (Form 0971)
  - Application submitted to either FDEP or SFWMD
  - FDEP or SFWMD forwards application to the U.S. Army Corps of Engineers
  - Applications then reviewed separately: State vs. Federal criteria
  
- ERP Regulatory Timelines:
  - 30-day, 60-day and 90-day timelines

## Exemptions from Permitting

Activities that do not need an Environmental Resource Permit (ERP) pursuant to Chapter 403.813 F.S. and Rule 40E-4.051 F.A.C:

- **Maintenance Dredging**

- Applicable only in manmade water bodies
- Dredge spoil must be deposited on an upland spoil site
- Appropriate BMPs for dredge and spoil sites; maintain water quality
- Dredging only to restore original design specifications
- If no prior permit or design plans, depth of dredge limited to 5 feet below MLW (mean low water elevation)

# Exemptions from Permitting



## ▪ Docking facilities :

- The construction, replacement or repair of mooring pilings and dolphins associated with private docking facilities
- Construction of private docks 1,000 square feet or less of over-water surface area and seawalls in artificially created waterways, where:
  - Construction will not violate existing water quality standards
  - The facility will not impede navigation or affect flood control
- The replacement or repair of existing docks, mooring piles or piers:
  - No fill material other than the piles is used
  - Same location, configuration and dimensions
  - Must be functional in its current condition, unless rendered non-functional due to a discrete storm, flood, accident or fire.



# Exemptions from Permitting

- **Boat Ramps (construction and maintenance):**
  - In artificial waterbodies where navigational access currently exists
  - Public boat ramps less than 30 ft wide; less than 25 cy dredged material
  - Installation of associated adjoining docks 500 sq ft or less over wetlands or other surface waters
  - Any dredged material placed on contained upland site
  - Appropriate BMPs for ramp and spoil sites; maintain water quality
  - Applicable to artificially created portions of the Florida Intracoastal Waterway



## Exemptions from Permitting

- **Docking facilities (installation or repair):**
  - Applies to private docks, piers and recreational docking facilities or similar facilities for local governments
  - Limit of 500 sq ft over wetlands, surface waters in OFW
  - Limit of 1,000 sq ft over all other wetlands, surface waters
  - Allows for construction/repair of associated boat shelters and gazebos
  - Facilities are for recreational, non-commercial activities
  - Piling supported or floating docks, no dredging or filling other than to install pilings
  - Shall not impede flow of water or cause navigational hazard
  - Shall be sole dock along shoreline for minimum distance
    - of 65 ft



# Exemptions from Permitting

- **Shoreline Stabilization:**
- **Construction of seawalls or rip-rap in artificially created waterways:**
  - Backfilling only as needed to level land behind seawall or riprap
  - Construction cannot violate water quality standards
  - Vertical seawalls in estuaries or lagoons not exempt, unless within an existing man-made canal where shoreline occupied in whole or part by vertical seawalls
- **Restoration of seawalls or rip rap**
- **Construction of seawalls or rip rap in wetlands or other surface waters**
  - Construction is between and adjoins seawalls or rip rap at both ends
  - Follows a continuous and uniform construction line
  - Limited to 150 ft in length
  - Shall not impede navigation, or adversely affect flood control or navigation



## Permit Exemptions- other requirements



- Exemptions from ERP permitting do not relieve an applicant from :
  - Obtaining permission to use or occupy sovereign submerged lands (SSL), owned by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (BOT)
  - Obtaining permission to use or occupy lands owned by a water management district (Right-of –Way permit) or the ACOE
  - Complying with local ordinances (including pollution control ordinances) or state water quality standards
  - Complying with state and federal listed species protections



## SFWMD Exemption Process

- Exemption verification fee- \$100.00
- Application submittal:
  - Form 0971 (Section A completed)
  - Proof of ownership
  - Location map and aerial photograph of project area
  - Copy of any existing permits for docking facility
  - Drawings of the proposed project, including:
    - Existing vs. proposed structures and their dimensions
    - Plan view and cross-sections, with a north arrow and clarification if drawing is or is not to scale.
    - MHW and MLW identified on plans
    - Turbidity and erosion control measures identified on plans
- Regulatory timeframes for review and issuance (30, 60 days)



## Noticed General Permits



- **40E-400.417: General Permit for Construction, Alteration, or Maintenance of Boat Ramps and Associated Accessory Docks**
- **40E-400.427: General Permit for Certain Piers and Associated Structures**
- **40E-400.431: General Permit for the Installation of Riprap**
- **40E-400.475: General Permit for Minor Activities**

## Noticed General Permits (Cont'd)



- Application fee of \$250.00
- Complete Form 0980 and submit all required documentation
- Intent is to provide minor general permits for activities determined to have minimal adverse impacts to the water resource, both individually and cumulatively
- Mitigation not required
- General Conditions (and in some cases special conditions) apply
- Issuance of a NGP constitutes certification of compliance with state water quality standards and
- Consistency with the Florida Coastal Management Plan, for projects located in or seaward of coastal counties

# E-Permitting

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

## ePermitting

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- > Application/Permit
- > Enforcement
- > Noticing


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Questions / Comments?



**Did you know?**

- > ePermitting training sessions are now available. Click [here](#) for a list of training dates. For additional information or to sign up for training, contact us at [epermits@sfwmd.gov](mailto:epermits@sfwmd.gov).
- > Regulatory guidance documents are available online (including ePermitting "How to" instruction guides, Water Use Basis of Review and ERP Volume IV). Click [here](#) to search

Welcome to **ePermitting**, an online resource used to search for application and permit information, submit a permit application and/or compliance data, apply to transfer an existing permit, and subscribe to receive electronic noticing of permit related information.

Utilization of ePermitting provides convenient, 24-hour online access to permit information, reduces applicant paperwork, eliminates printing and postage costs and reduces permit processing time.

ePermitting users can submit applications for Environmental Resource (ERP), Consumptive Water Use (CUP), and Nutrient Source Controls/Works of the District permits.

For additional information or questions on electronic submittals, please contact us at [epermits@sfwmd.gov](mailto:epermits@sfwmd.gov).



# E-Permitting Guidance

- E-Permitting Trainings
  
- On the WEB:
  - [Environmental Resource Permitting Forms Page](#)
    - E-Permitting File Naming Conventions
    - How to search permit information
  
  - [Regulatory Guidance Publications Page](#)
    - How to submit documents
    - How to subscribe to e-noticing
    - E-Permitting Training Manual
  
- SFWMD Staff



## When You Need an ERP

- **Appropriate application fee**
- **Application submittal:**
  - **Form 0971 (Sections A, C and E & Section G if applicable)**
  - **Proof of ownership**
  - **Location map and aerial photograph of project area**
  - **Copy of any existing permits for docking facility**
  - **Signed and Sealed drawings of the proposed project, including:**
    - **Existing vs. proposed structures and their dimensions**
    - **Plan view and cross-sections**
    - **MHW and MLW identified on plans**
    - **Turbidity and erosion control measures identified on plans**
- **Regulatory timeframes for review and issuance (30, 60, 90 days)**

# ERP Requirements



- **Basis of Review : Section 4.0 (Environmental Criteria)**
  - construction in *wetlands* and *surface waters*: delineated pursuant to Chapter 62-340, F.A.C. as ratified in section 373.4211, F.S.
  
- **Section 4.1.1- Environmental Conditions for Issuance: 7 general criteria**
  - Refer also to Rule 40E-4.301-302, F.A.C.
  - Protection of wetland/OSW value, public interest, water quality, Class II waters, estuaries and lagoons. No adverse secondary or cumulative impacts.
  
- **Section 4.2.1- Elimination or Reduction of Impacts**
  - Protection of seagrasses and other benthic communities
  - Mitigation required for unavoidable impacts

## ERP Requirements- Wildlife

- **Section 4.2.2- Fish, Wildlife, Listed Species and their Habitats**
- **Reasonable Assurances-** applicant shall not cause adverse impacts to:
  - Abundance and diversity of fish, wildlife and listed species; and
  - The habitat of fish, wildlife and listed species
- **Agency Coordination with:**
  - Florida Fish and Wildlife Conservation Commission (FWC)
  - U.S. Fish and Wildlife Service (FWS)
  - National Marine Fisheries Service (NMFS)
  - Counties that have Manatee Protection Plans, Aquatic Preserves
- **Manatee, sea turtle and smalltooth sawfish construction conditions**

# ERP Requirements



- **Section 4.2.3- Public Interest Test (7 criteria)**
  
- **Section 4.2.3.3- Navigation, Water Flow, Erosion and Shoaling**
  - Considers impacts to navigation both during construction and long-term
  - Provide copies of any Coast Guard permits
  - Erosion/shoaling a concern with channel relocations, construction of jetties, breakwaters, groins, bulkheads, etc....
  
- **Section 4.2.3.4- Fisheries, Recreation, Marine Productivity**
  - Considers adverse effects to sport or commercial fisheries, marine productivity or current recreational uses of the affected water body



# ERP Requirements



- **Section 4.2.3. 6 – Historical and Archaeological Resources**
- **Section 4.2.3.7- Current Condition and Relative Value of Functions**
  
- **Section 4.2.4- Water Quality**
  - **Short-term WQ considerations**
    - **Construction access for barges, controlling discharge of spoil, pollutants**
  - **Long-term WQ considerations**
    - **Optimal depth, configuration of facility and long-term management**
  - **Additional considerations for docking facilities**
    - **Hydrographic studies**
    - **WQ considerations: fueling facilities, domestic and solid waste, treated wood pilings, anti-fouling paints**

## ERP Requirements

- **Section 4.2.5 – Class II Waters & Waters Approved for Shellfish Harvesting**
  - Limits activities within or adjacent to Class II waters or those approved for shellfish harvesting (Certain exceptions apply)
- **Section 4.2.6- Vertical Seawalls**
  - Generally prohibited within estuaries or lagoons (certain exceptions apply)
- **Section 4.2.7- Secondary Impacts**
- **Section 4.2.8- Cumulative Impacts**
- **Section 4.3-Mitigation**



# Mangrove Trimming

- Trimming or alteration of mangroves regulated in accordance with the Mangrove Protection Act of 1996 (403.9321-9333 F.S.)
- Applies to three (3) native species of mangroves
- Authorizations include exemptions, general permits, and individual permits
- Individual Permits involve review using ERP criteria- mitigation may be required
- Separate mangrove trimming permit not required if trimming is associated with an ERP
- Professional Mangrove Trimmer- required for trimming & alteration
- <http://www.dep.state.fl.us/water/wetlands/mangroves/index.htm>

## ERP and Sovereign Submerged Lands (SSL)



- In addition to ERP program, activities within SSL are governed by Chapters 253 F.S. and Rule 18-20 F.A.C. Proprietary authorization is required.
- SSL generally extend waterward from MHW in tidal waters and OHW in inland waters
- Typical SSL authorizations: consent by rule, letter of consent, easement or lease
- Authorizations consider: water dependency, riparian rights, impacts to submerged resources, and public preemption
- Concurrent review of SSL requirements if ERP application proposes activities in sovereign waters.
- Exemptions and Noticed General ERP's do not require concurrent authorizations.
- Activities in Aquatic Preserves governed by Chapter 258. F.S. and Rule 18-20 F.A.C.



## Sovereign Submerged Lands (SSL)

- Applications for Letter of Consent (18-21.007 F.A.C):
  - Application Information
  - Satisfactory evidence of upland interest
  - Detailed statement of proposed activity
  - Drawings
  - Cubic yards of severed materials
  - *No application fee*
  - Qualifying activities listed in 18-21.005(1)(c)

# Sovereign Submerged Lands (SSL)

## Leases

- Revenue generating activities
- Private multi family docks in aquatic preserves
- Private residential docks, piers, boat ramps that do not qualify for Consent by Rule or Letter of Consent (over 10:1 ratio)
- Open water mooring fields





## Sovereign Submerged Lands (SSL)

- Applications for Leases (18-21.008 F.A.C)
- Application Information
- Processing Fee
- Satisfactory evidence of title
- Survey or sketch for  $\leq 3,000$  sf
- List of property owners within 500 feet (noticing requirements)
- Local government status
- Sales tax exemption certificate (if applicable)
- Cubic yards of severed material

# Sovereign Submerged Lands (SSL)

## Easements: Public and Private

- Utility crossings
- Roads and Bridges
- Groins, breakwaters, and shoreline protection
- Public and private channels that do not qualify for Letter of Consent
- Cultural resource recovery







## **Sovereign Submerged Lands (SSL)**

- **Applications for Public Easement (18-21.009 F.A.C)**
- **Application Information**
- **Processing Fee or waiver**
- **Satisfactory evidence of sufficient upland interest or consent of upland owner for proposed use (required prior to construction, but do not have to submit with application)**
- **Statement of proposed use**
- **Survey/Sketch**
- **List of property owners within 500 feet (noticing requirements)**
- **Estimate of cubic yards of severed material**



## Sovereign Submerged Lands (SSL)

- Applications for Private Easement (18-21.010 F.A.C)
- Required information for public easement, and
- Survey or sketch for  $\leq 3,000$  sf
- Approval from public road agency (if applicable)
- Payment of easement value (appraisal)
- Statement that the easement is in the public interest

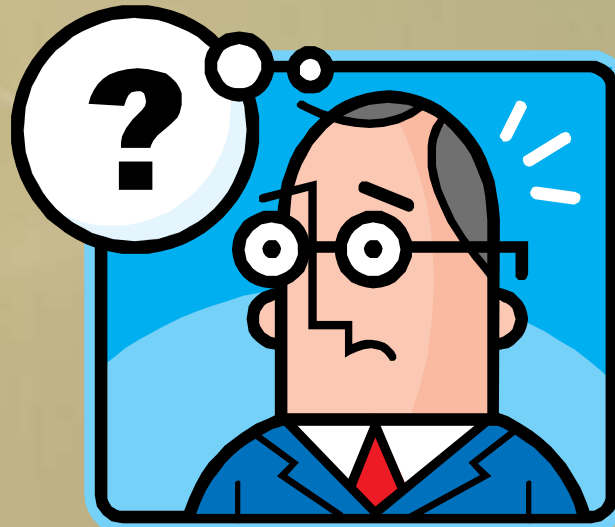


# Construction Completion/Certification

- **Construction Completion:**
  - **Within 30-days after Permit is issued submit (Form 0960) Construction Commencement Notice**
  - **Prior to the start of Construction (2 ~ 3 weeks prior) schedule a pre-construction meeting**
  
- **Certification:**
  - **Submit appropriate forms and as-built drawings**
  - **District staff focus on dimensions and configuration of docking facilities, and also project-specific special conditions**

# ERP and SSL

Questions?



# Regulatory Contacts

## SUPERVISORS- ERP

- Laura Layman (environmental)
  - 338-2929 x 7725
  - [llayman@sfwmd.gov](mailto:llayman@sfwmd.gov)
- Dan Waters, PE (engineering)
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## COMPLIANCE/CERTIFICATIONS

- Ken Kellum, P.E.
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# Lower West Coast Partnering Session

- **Presentation**
  - Presentation will be posted on the District's website and will be available to download
- **Regulatory Updates**
  - HB/SB Permit Extensions
  - Regulatory correspondence templates
- **Suggested topics for future discussion??**
  - Please fill out the survey with topics you are interested in discussing at future meetings