

## CHAPTER 31-16

### RIVER ENHANCEMENT

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#### **31-16.001 Findings and Purposes**

The Loxahatchee River has great environmental and historical significance for the communities and citizens on its shores, as well as to the people of the State of Florida. The Loxahatchee River is a valuable natural resource worthy of protection and enhancement.

The Governing Board (“Governing Board”) of the Loxahatchee River Environmental Control District (“District”) in seeking to protect and enhance the Loxahatchee River (“River”), has obtained the advice and recommendations of its neighboring government officials, citizens living near the River, professional persons with technical expertise in water quality and surface water management, and Consulting Professionals.

The neighboring government officials composed the Stormwater Advisory Committee of 1992, which recommended the District should undertake the role of facilitator and planner to coordinate the formation of the Loxahatchee River Basin Stormwater Management Plan, and that implementation of such a Plan should be by the most local form of government willing to undertake such responsibilities.

Individual citizens from different walks of life, all of whom live within the Loxahatchee River basin, composed the Citizens Advisory Committee of 1992. Their findings and recommendations are as follows: That pollution prevention and river enhancement should be the objectives of the District’s efforts. That the public wants the Loxahatchee River protected, and that the District is the organization chartered to protect the River. That the District is the only government agency whose enabling legislation has as its primary purpose to protect the River basin. That public education and information is needed on many levels to inform and educate the public to the environmental condition of the Loxahatchee River system. That there are three major threats to water quality in the Loxahatchee River: stormwater discharges, septic tank discharges, and wastewater point source discharges. That the best approach to managing stormwater is a three tiered approach, beginning first with planning, monitoring, inspection, mapping, information gathering and public education, to be followed secondly by operation and maintenance activities, with the third tier being retro-fitting or construction of capital improvements. That the eastern and western portions of the Loxahatchee River basin are significantly different with respect to stormwater. That by working with other units of government in the River basin, the District is the logical entity to provide the most cost effective management of stormwater. That there are costs to protect the River, and a tiered approach in the eastern urbanized portion of the basin can provide needed services at the lowest possible cost. That the District should work with other government entities to provide a coordinated approach

to understand options and opportunities in the western ruralized portion of the River basin. That the District continue its water quality monitoring program and its service as a coordinator of all information relating to the environmental condition of the Loxahatchee River basin.

The professional persons with technical expertise in water quality and surface water management composed the Technical Advisory Committee of 1992. The Technical Advisory Committee findings and recommendations are as follows: That the Loxahatchee River is afforded the highest level of protection available through State and Federal classifications under the following six State and Federal classifications and designations: NATIONAL WILD AND SCENIC, AQUATIC PRESERVE, OUTSTANDING FLORIDA WATER, MANATEE PROTECTION AREA, CLASS I PUBLIC WATER SUPPLY, AND CLASS II POTENTIAL SHELLFISH HARVESTING AREA. That the Loxahatchee River does not always meet all the State water quality standards, nor always meet the established water quality targets. That stormwater is a threat to the water quality of the Loxahatchee River and associated water bodies. That although a substantial amount of usable water quality data has been collected historically, and consolidated into a manageable database system, that there exists a need for the continuation of water quality monitoring within the Loxahatchee River basin. That the District should maintain and enhance its present water quality monitoring network and coordinate all future monitoring efforts undertaken within the Loxahatchee River basin.

The District has retained Consulting Professionals in connection with scientific investigations and studies to help determine that the River needs protection and enhancement. The Governing Board finds in order to enhance the Loxahatchee River, and to fulfill the mandate from the Loxahatchee River Environmental Control Act, Chapter 71-822 Special Acts of Florida, 1971, as amended (“Act”), that the District provide for a River Enhancement Program, coordination between local governments and the role of facilitator; and provide for greater accountability as to the ownership, operation and maintenance of the many Systems effecting the River basin.

The District, in accordance with the findings and recommendations of the Stormwater Advisory Committee, Citizens Advisory Committee, Technical Advisory Committee, and the Consulting Professionals, declares for the benefit of all the people of Florida, its purpose in developing a River Enhancement Program.

*Specific Authority Chapter 71-822 Special Acts of Florida, 1971, as amended. Law Implemented, Chapter 71-822, as amended, Section 2, Sections 5(2), 5(6), 6(1), 6(2), 6(3), 6(4), 6(5), 6(6), 6(9), 6(11), 6(16), 6(17), 6(18), 6(19), 6(20), 6(21), 6(22), 6(23), and Sections 10, 12, 14. History-New\_\_\_\_\_.*

### **31-16.002 River Enhancement Program**

- (1) Pursuant to the mandate in the Act, the District hereby implements the River Enhancement Program with elements set forth herein. The theme of the Program is to keep the River clean and provide coordination to assist other local governments and owners of Systems in order for the Program purposes to be accomplished by the most local form of governance. The Program will be conducted in coordination and

cooperation with such other governments, owners, and operators of Systems in the District. The Program will have three elements including the Plan, Operation and Maintenance, and Capital Improvements.

- (2) The Loxahatchee River Basin Stormwater Management Plan shall consist of:
- (a) Inventory – To identify all stormwater System features and facilities relating thereto in the District, which exist now and in the future; and inventory the associated land use activities.
  - (b) Inspection – To evaluate all stormwater System features and facilities relating thereto in the District, which exist now and in the future. To assess conformance that Systems have been constructed in accordance with its design and permits issued by the Regulatory Authority, as well as to assess the maintenance condition and operational effectiveness of the existing Systems. When Systems are found to be non-conforming with regard to permit conditions for construction or operation, the District will work with the owner of the system and the Regulatory Authority to facilitate needed improvements.
  - (c) Mapping – To provide geographic representation of all stormwater System features and facilities relating thereto in the District, which exist now and in the future. Existing resources from other governments and private entities will be utilized to the greatest extent possible.
  - (d) Identification of Owners and Operators – The Plan will identify and the District will communicate with the owner and operator of each stormwater System which exists in the District.
  - (e) Water Quality Monitoring – To provide continued monitoring of the Loxahatchee River, and the ground and surface water discharges into the Loxahatchee River basin, under the unified management of a District –wide system for the purpose of, among other things, reducing or controlling erosion, sedimentation and turbidity, the excessive introduction of oxygen demanding substances, nutrients, harmful bacteria, toxics, and other pollution of water, danger and damage to life and property, and to protect and encourage the use of efficient natural and man-made means to these ends, and report and disseminate the results. The Water Quality Monitoring by the district shall not automatically relieve any private entity or Public agency in the District from the requirements for water quality monitoring, unless specifically agreed to by the private entity or Public agency and the District, subject to Regulatory Authority approval.
  - (f) Public Education – To provide a public education program and coordinate with other stormwater management entities. To provide means whereby the District encourages, supports, and conducts research to improve stormwater Systems. To provide forum for periodic meetings of all public and private sector owners and operators of Systems in order to better coordinate and facilitate the River Enhancement Program.
  - (g) Interlocal Agreements & Contracts – To work with and coordinate with the various Public agencies, Regulatory Authorities, and with the private sector. The purpose of such Agreements and Contracts is to formalize intergovernmental cooperation and private sector commitments in order to promote the River Enhancement Program of the District.
  - (h) Recommendations of the Plan – to provide a Loxahatchee River Basin Stormwater Management Plan; present recommendations for implementation to government

agencies and the private sector; coordinate the Plan and the recommendations for a uniform River Enhancement Program for the Loxahatchee River Basin as a means of complying with Federal, State and local mandated goals and priorities; to facilitate the implementation of a River Enhancement Program; and provide for the current and future needs of the District with respect to pollutant discharge elimination systems within the geographical boundaries of the District

- (3) The District's involvement with operation and maintenance of Systems shall include:
  - (a) Operation and Maintenance – To document that all public and private Systems have owners, and that all owners have operators implementing a program of operation and maintenance. Where operation and maintenance is being adequately performed in accordance with the Regulatory Authority, the District will not duplicate that function. The intent of the District is to have the most local form of governance, be it public or private, conduct operation and maintenance. Where operation and maintenance are not being performed in accordance with the Regulatory Authority standards, education and assistance will be made available to the owner and operator in order for there to be better operation and maintenance. If the operation and maintenance is not being performed adequately because of insufficient funding, the District will seek to facilitate funding for all owners and operators needing funding for operation and maintenance through Interlocal Agreements with Public agencies and Contracts with the private sector. As to owners, that, after education, assistance, and funding, find the owner conducted operation and maintenance too burdensome, said owner may voluntarily give the System to the District in accordance with the Act, whereby the district will own and operate the System.
  - (b) Compliance Programs – That the District will assist in the permitting and associated activities under local, regional, state, and federal programs, including the National Pollutant Discharge Elimination System (“NPDES”) Program, under Section 403.4885, Florida Statutes, as amended, and the United States Environmental Protection Agency. The intent of the District is to have the most local form of governance, be it public or private, conduct compliance programs, and where it is being performed in accordance with the Regulatory Authority, the District will not duplicate that function.
- (4) The District's involvement with construction, renewal and replacement of Systems shall include:
  - (a) Construction – To help coordinate and provide guidelines for construction practices, with specific provision for future operation and maintenance activities. The primary responsibility for the design, permitting, and construction of new Systems is with existing owners, and where it is being adequately performed, the District will not duplicate that function. The intent of the District is to have the most local form of governance, be it public or private, conduct construction, renewal and replacement activities. Funding for construction is still the responsibility of owners.
  - (b) District Funding – The District funding for capital, renewal, or retrofit facilities shall be in accordance with the Act.

*Specific Authority Chapter 71-822 Special Acts of Florida, 1971, as amended. Law Implemented, Chapter 71-822, as amended, Sections 2, 5(2), 6(1), 6(2), 6(3), 6(4), 6(5), 6(6),*

6(7), 6(9), 6(10), 6(11), 6(12), 6(13), 6(17), 6(18), 6(19), 6(20), 6(21), 6(23), 6(24), 6(25), 6(27) and Sections 8, 9, 10, 12, and 14. History – New \_\_\_\_\_.

**31-16.003 River Enhancement Fees; Classification and Criteria; Collection; Accountability**

- (1) Definitions: The following words, when used herein, shall have the meanings indicated, unless the context indicates otherwise:
  - (a) “Consulting Professionals” means a qualified professional or firm of professionals licensed in the State of Florida as defined in 403.0877, Florida Statutes, as amended, and retained by the District to perform the acts and carry out the duties relating to the River Enhancement Program, as required by the District.
  - (b) “ERU” shall mean Equivalent Residential Unit which is determined by the Governing Board of the district to be the standard unit of measurement for implementation of this Rule. An ERU is numerically equivalent to 2,844 square feet of Impervious Area, as determined by statistical analysis of the single family residential parcels in the District.
  - (c) “Exempt Property” shall mean that property not subject to the payment of the River Enhancement Fees, or constitutionally or statutorily exempt from imposition of same.
  - (d) “Impervious Area” shall mean an area which either prevents or retards the entry of water into the soil mantle. Common Impervious Areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas and other surfaces which similarly impact infiltration and runoff. Roads and their related right of ways, and waterbodies and their related easements shall not be considered Impervious Areas.
  - (e) “Non-Residential Property” shall mean any improved land which does not have as its principal use a place of residence and is not classified as residential by the Property Appraiser of the appropriate County.
  - (f) “Regulatory Authority” shall mean the government agency or agencies with jurisdiction to regulate, license, or permit a System.
  - (g) “River Enhancement Fees” shall mean the non-advallorem fees, charges, and costs imposed by the District pursuant to this Rule and the Act, as amended and supplemented.
  - (h) “System “ or “Systems” mean the stormwater facilities which are implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce over drainage, environmental degradation, flooding and water pollution or otherwise affect the quantity and quality of discharges from the System into the Loxahatchee River basin.
  - (i) “Unimproved Land” shall mean land that does not have any Impervious Area within its boundary.
- (2) In addition to the Exempt Property defined in subsection (1)(c) above, the Exempt Property shall be those properties determined by the District to meet any one of the following classifications:
  - (a) Unimproved Land, or

- (b) Roads and their related right of ways, or
  - (c) Waterbodies and their related easements.
- (3) For purposes of imposing the River Enhancement Fees, all properties, other than Exempt Property, shall be given an appropriate classification. The schedule of classifications is:
- (a) Single Family Residential, further classified by Total Impervious Areas (“TIA”) as:
    - 1. Small (Less than 2,100 sq. ft. TIA) = 0.6 ERU
    - 2. Medium (2,100-3,100 sq. ft. TIA) = 1.0 ERU
    - 3. Large (greater than 3,100 sq. ft. TIA) = 1.4 ERU
  - (b) Multi-Family Residential including condominiums, townhouses, mobile home lots, recreational vehicle lots, and apartments = 0.6 ERU.
  - (c) Non-Residential Improved Property shall have the number of ERUs determined by the formula of the TIA sq. ft. divided by the numerical equivalent of an ERU of 2,844 sq. ft.
- (4) River Enhancement Management Fee – Upon the later of two years from the effective date of this Rule, or the completion of the Loxahatchee River Basin Stormwater Management Plan, the District will charge a River Enhancement Management Fee in an amount to be determined by subsequent amendment of this Rule.
- (5) River Enhancement Operation and Maintenance Fee – The primary responsibility for funding operation and maintenance services is with the owners and operators of Systems. Where the District assists with the funding for operation and maintenance, or where the District assumes the operation and maintenance, or where the District assumes the operation and maintenance of a private system, the District will collect an Operation and Maintenance Fee as to the cost, cleaning, minor repair, detailed inspection for problems, labor, equipment, supplies, administrative costs, and related expenses, in an amount to be mutually agreed to by Interlocal Agreement with a Public agency, or by Contract with a private entity, or to be established by subsequent amendment of this Rule.
- (6) River Enhancement Construction Fee – The primary decision for funding for construction and major rehabilitation of Systems is up to the owners and operators thereof. If the owners and operators desire the assistance of the District, the District will collect a River Enhancement Construction Fee as to the cost, design, construction, and major rehabilitation of stormwater management facilities, administrative costs, and related expenses where the District designs, constructs, or contracts for the construction of such Systems. The River Enhancement Construction Fee will be in an amount to be mutually agreed to by Interlocal Agreement with a Public agency, or by Contract with a private entity, or to be established by subsequent amendment of this Rule. It is not the intention of this Rule to restrict the design, funding, or construction of Systems.
- (7) Cooperation with other Stormwater Utilities – The intention of the District in providing for the River Enhancement Operation, Maintenance, and Construction Fees is to not duplicate or preclude other governments and private entities from collection of such Fees, and where said Fees are being collected to perform these functions, the District will not duplicate these Fees. The intention of the district is to not preclude other governments from forming their own "Stormwater Utilities", but rather to work cooperatively to enhance the River.
- (8) Interlocal Agreement as to Fees – In accordance with the “Florida Interlocal Cooperation Act of 1969”, Florida Statute 163.01, a Public agency and the District will utilize an Interlocal Agreement, in connection with collecting the River Enhancement Fees, or

utilizing the River Enhancement Operation and Maintenance Fee, or the River Enhancement Construction Fee.

- (9) Adjustments/Appeals – Any customer or property owner who feels that the River Enhancement Fees for his property have been assigned or computed incorrectly may petition in writing to the Executive Director of the District, for a review of said Fee. If not satisfied with the determination of the Executive Director, the petitioner may request a hearing before the Governing Board, whose decision shall be final.
- (10) Method Collection – The method of collection of the River Enhancement Fees include collection by the District, by Interlocal Agreement with a Public agency, by the County Property Appraiser’s Office under Section 197.3632, Florida Statutes, or by a combination of the above. The property owner and user shall be jointly and severally liable for payment to the District. The remedies of the District as set forth in the District’s Rules and the Act, as to the collection of amounts due the District, shall apply to this Rule.
- (11) Flood Prevention – Floods from storm events may occasionally occur which exceed the capacity of the Systems or other stormwater management system facilities which are operated, maintained, or construed by funds made available under this Rule. This Rule shall not be construed or interpreted to mean that property subject to the River Enhancement Fees established herein will always (or at any time) be free from storm event flooding or flood damage or that systems capable of handling all storm events can be cost-effectively operated, maintained or constructed. This Rule does not create any liability on the part of, or cause of action against, the District, or any official or employee thereof, for any flood damage that may result from such storms or the runoff thereof. This Rule does not purport to reduce the need or the necessity for individual property owners, operators, and users obtaining flood insurance.
- (12) Accountability – The Loxahatchee River can be enhanced to the extent the owners, operators, and users of Systems are accountable in the construction, operation, and maintenance of their Systems. The District seeks to educate, coordinate, and facilitate the River Enhancement Program, and assist with the operation, maintenance, and construction of Systems. If there is not accountability for a System, the District will take such remedial measures authorized by law, the District’s Rules, or the Act in order to preserve, keep and enhance one of Florida’s most valuable natural resources, the Loxahatchee river.

*Specific Authority Chapter 71-822 Special Acts of Florida, 1971, as amended. Law Implemented, Chapter 71-822, as amended, Sections 2, 5(2), 5(6), 5(8), 6(1), 6(2), 6(4), 6(5), 6(6), 6(7), 6(8), 6(9), 6(10), 6(11), 6(12), 6(13), 6(14), 6(15), 6(16), 6(17), 6(18), 6(19), 6(20), 6(22), 6(23), 6(24), 6(25), 6(27) and Section 8, 9, 10, 12, 14, 15, and 16. History-New \_\_\_\_\_.*