

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**The State of Florida Department of Transportation,**  
**The State of Florida Department of Environmental Protection,**  
**and**  
**The South Florida Water Management District**

This Memorandum of Understanding is made and entered into by and between the State of Florida Department of Transportation (FDOT), the State of Florida Department of Environmental Protection (FDEP), and the South Florida Water Management District (SFWMD) (collectively the Agencies) for the purpose of encouraging the voluntary creation/restoration or enhancement of wetlands or other surface waters along some State transportation facilities.

WHEREAS, the Agencies are committed to the creation/restoration, enhancement and preservation of Florida's natural communities; and

WHEREAS, the Agencies agree that voluntarily created/restored or enhanced wetlands and other surface waters will have inherent environmental benefits; and

WHEREAS, the FDEP and the SFWMD have agreed that the impact of future transportation related facility improvements on wetlands and other surface waters voluntarily created by FDOT will not be harmful to water resources and is not inconsistent with the overall objectives of the district; and

WHEREAS, the FDEP and the SFWMD have agreed that the impact of future transportation related facility improvements on wetlands and other surface waters voluntarily created by FDOT is not contrary to the public interest; and

WHEREAS, FDOT may elect to voluntarily create wetlands and other surface waters from uplands; restore wetlands and other surface waters where they formerly occurred, but no longer exist; and to enhance existing wetlands and other surface waters within the right of way that is under its jurisdiction.

NOW THEREFORE, in consideration of the mutual benefits to be derived from this MOU and the covenants contained herein, the Agencies agree as follows:

- the impact of future transportation related facility improvements on wetlands and other surface waters voluntarily created/restored by FDOT after the effective date of this MOU is not an impact requiring mitigation within the meaning of sections 4.3 through 4.3.8 of the South Florida Water Management District Basis of Review for Environmental Resource Permit Applications and Rule 62-330.200(4), F.A.C., unless such wetlands or other surface waters provide threatened or endangered species critical habitat;
- the impact of future transportation related facility improvements on wetlands or other surface waters voluntarily enhanced by FDOT after the effective date of this MOU shall only be an impact requiring mitigation within the meaning of the rules noted above to the extent that the activity would have impacted the pre-enhancement wetland or other surface waters, unless such wetlands or other surface waters provide critical threatened or endangered species habitat; and
- the voluntarily created/restored or enhanced wetlands will not be subject to maintenance or monitoring requirements.

ACCORDINGLY, the Agencies agree that

1. The above recitals are true and correct and are deemed incorporated herein.
2. Voluntarily created/restored or enhanced wetlands or other surface waters shall not be used to offset impacts of FDOT projects to wetlands or other surface waters, and FDOT will receive no mitigation credit for voluntarily created/restored or enhanced wetlands or other surface waters.
3. Voluntarily created/restored or enhanced wetlands or other surface waters shall not be used to offset wetland or other surface waters impacts caused by other entities, or create mitigation credits for other entities.
4. FDOT shall be responsible for maintaining a record or "registry" of voluntarily created/restored or enhanced wetlands or other surface waters. SFWMD or FDEP, as appropriate pursuant to the Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S., Between South Florida Water Management District and Department of Environmental Protection [October 27, 1998], or any amending or superseding agreements as authorized under Section 373.046(4), F.S. , shall be responsible for review and approval of voluntarily created/restored or enhanced wetlands or other surface waters for inclusion in the "registry" as follows:
  - a. Voluntarily created/restored or enhanced wetlands or other surface waters that are part of a larger project undergoing permit review will be reviewed for inclusion in the "registry" through the permit application process.
  - b. Voluntarily created/restored or enhanced wetlands or other surface waters that are part of a previously permitted project, where the permit is still active, will be reviewed for inclusion in the "registry" through an application for a letter modification pursuant to Rule 40E-4.331(2)(b), F.A.C., from the SFWMD or a minor modification pursuant to Rule 62-343.100(1)(a), F.A.C., from DEP, as appropriate; and
  - c. Voluntarily created/restored or enhanced wetlands or other surface waters that are not part of a project addressed under 4 a. and 4 b., above, will be reviewed for inclusion in the "registry" through an application for an exemption pursuant to Subsection 373.406(6) F.S., ("de minimis exemption") for regulated activities or by letter if the proposed activity is not regulated by Part IV of Chapter 373, F.S.


The permit, permit modification, exemption confirmation or letter (hereafter referred to as "approval documentation") issued pursuant to paragraph 4 above shall identify the voluntarily created/restored or enhanced wetlands or other surface waters. For wetlands or other surface waters created from uplands and wetlands or other surface waters restored where they formerly occurred, but no longer exist, the approval documentation shall specify that no mitigation under Part IV of Chapter 373, F.S., will be required. For voluntarily enhanced wetlands or other surface waters, the approval documentation shall clearly document the pre-enhanced condition of the wetland or other surface water, and state that mitigation for future impacts shall be based on such pre-enhanced conditions.
6. A copy of the applicable approval documentation will be maintained in the FDOT "registry." Upon completion of construction of a voluntarily created/restored or enhanced wetland or other surface water, a detailed drawing and survey of the limits of the created/restored or enhanced wetland or other surface water shall be prepared by FDOT. A copy of these documents shall be maintained in the FDOT "registry" and a

copy shall be submitted to SFWMD or FDEP, as applicable, for inclusion in the applicable files. Impacts outside the surveyed limits of the wetland or other surface water as shown in these documents are not eligible for consideration under this agreement.

7. Prior to alteration of a voluntarily created/restored or enhanced wetland or other surface water included in the registry, the FDOT shall apply for and receive any needed authorization under Part IV of Chapter 373, F.S., from the FDEP or SFWMD, as appropriate pursuant to the Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S., Between South Florida Water Management District and Department of Environmental Protection [October 27, 1998], or any amending or superseding agreements as authorized under section 373.046(4) of the Florida Statutes. The application submittal for such authorization shall include the applicable approval documentation from the FDOT registry that identifies the created/restored or enhanced wetland or other surface water, and indicates the mitigation provisions that exist for alteration of these wetlands or other surface waters.
8. This MOU shall become effective on the latest date of signing.

SOUTH FLORIDA  
WATER MANAGEMENT DISTRICT  
BY ITS GOVERNING BOARD

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION


  
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DAVID B. STRUHS  
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Date: 2/4/04

Date: 2/4/04

FLORIDA DEPARTMENT OF  
TRANSPORTATION

  
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SECRETARY  
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Date: 2/4/04