

**LEGISLATIVE  
COMMITTEE MEETING  
November 18, 2011**

**PRELIMINARY AGENDA**

**FLORIDA INLAND NAVIGATION DISTRICT's  
Legislative Committee Meeting**

**8:00 a.m., Friday, November 18, 2011**

**One Ocean Hotel  
1 Ocean Blvd.  
Atlantic Beach, Duval County, Florida.**

**Committee Members**

**Nancy Freeman, Chair**

**Commissioners Tyler Chappell, Don Cuzzo, Spencer Crowley & Jon Netts.**

**Item 1.      Call to Order.**

Chair Freeman will call the meeting to order.

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**Item 2.      Roll Call.**

Assistant Executive Director Mark Crosley will call the roll.

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**Item 3.      Additions or Deletions.**

Any additions or deletions to the meeting agenda will be announced.

RECOMMEND - Approval of a final agenda.

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**Item 4.      Biennial Review of District Administrative Rules for 2011.**

Florida statutes now require that the District perform a biennial review of the District's Administrative Rules and submit a review report to the Senate President, the Speaker of the House and the Joint Administrative Procedures Committee. The backup materials contain staff's review pursuant to this statute. The Board referred this report to the Committee for its review.

(see back up pages 3 - 33)

RECOMMEND      Approval of: (1) the Report of the Biennial Review of District  
Administrative Rules for 2011, and; (2) submission of the report by the  
Chair to the required parties.

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**Item 5.       Enhanced Biennial Review of District Administrative Rules for 2011.**

The Florida Legislature in the 2011 session enacted a law requiring the District perform an enhanced biennial review of the District's Administrative Rules and submit a review report to the Senate President, the Speaker of the House and the Joint Administrative Procedures Committee. The backup materials contain staff's review pursuant to this statute. The Board referred this report to the Committee for its review.

(see back up pages 34 – 38 and rules on pages 6 - 32)

RECOMMEND       Approval of: (1) the Report of the Enhanced Biennial Review of District Administrative Rules for 2011, and; (2) submission of the report by the Chair to the required parties.

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**Item 6.       Washington DC. Report.**

The District's Washington DC Government Relations firm has submitted a status report on their activities on the District's federal issues.

(see back up page 39 )

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**Item 7.       Additional Staff Comments and Additional Agenda Items.**

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**Item 8.       Commissioners Comments.**

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**Item 9.       Adjournment.**

## BIENNIAL REVIEW OF DISTRICT ADMINISTRATIVE RULES FOR 2011

### BACKGROUND

FIND is an "agency" which is subject to the Administrative Procedures Act, Chapter 120, Florida Statutes. Section 120.74(1), F.S. requires all agencies to perform a formal review of its rules every 2 years. Section 120.74(2), F.S. requires the head of the agency (the Board of Commissioners in our case) to file a report with the President of the Senate, the Speaker of the House of Representatives, and the Joint Administrative Procedures Committee, which certifies that the agency has complied with the requirements of Section 120.74. For this year, the submission deadline has been extended to December 1, 2011 by Section 120.745(2)(a), F.S.

In the biennial review, each agency must:

- (a) Identify and correct deficiencies in its rules;
- (b) Clarify and simplify its rules;
- (c) Delete obsolete or unnecessary rules;
- (d) Delete rules that are redundant of statutes;
- (e) Seek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector;
- (f) Contact agencies that have concurrent or overlapping jurisdiction to determine whether their rules can be coordinated to promote efficiency, reduce paperwork, or decrease costs to government and the private sector; and
- (g) Determine whether the rules should be continued without change or should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.

STAFF REPORT AND FINDINGS  
BIENNIAL REVIEW OF DISTRICT ADMINISTRATIVE RULES FOR 2011

FIND has three Rule Chapters: Chapter 66B-1 Cooperative Assistance Program, Chapter 66B-2 Waterways Assistance Program and 66B-3 Land Acquisition Procedures. There are 42 individual rules under these three Rule Chapters. While each year at the end of the grant application process, Staff reviews the assistance program rules and recommends revisions to the Board, it is necessary to have a formal review process for all of FIND's rules on a biennial basis.

In satisfaction of the biennial formal review requirement, Staff has reviewed each of the 42 rules and makes the following recommended findings to the Board:

Requirement: Identify and correct deficiencies in the District's rules.

Finding: There are no deficiencies in the District's rules requiring correction.

Requirement: Clarify and simplify the District's rules.

Finding: There are no rules that require clarification or simplification except:

Rule 66B-2.004 Policy

Rule 66B-2.005 Funds Allocation

Rule 66B-2.008 Project Eligibility

Requirement: Delete obsolete or unnecessary rules.

Finding: There are no obsolete or unnecessary rules.

Requirement: Delete rules that are redundant of statutes.

Finding: There are no rules that are redundant of statutes.

Requirement: Seek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector.

Finding: No changes to District rules are warranted, as the current rules are efficient, do not generate unnecessary paperwork, minimize costs to government, and do not impose any costs on the private sector.

Requirement: Contact agencies that have concurrent or overlapping jurisdiction to determine whether their rules can be coordinated to promote efficiency, reduce paperwork, or decrease costs to government and the private sector.

Finding: There are no agencies with concurrent or overlapping jurisdiction with the District.

Requirement: Determine whether the rules should be continued without change or should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.

Finding: All existing District rules should be continued without change except for the rules being clarified as noted above. District rules have no impact on small business.

Additional Requirements for the Report:

Changes to District rules made as a result of this review: The District has initiated the revision of the following rules to clarify them:

Rule 66B-2.004 Policy

Rule 66B-2.005 Funds Allocation

Rule 66B-2.008 Project Eligibility

Recommended statutory changes that will promote efficiency, reduce paperwork, or decrease costs to government and the private sector: None.

Economic impact of District rules on small business: None.

Identification of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574, F.S.: None.

**66B - FLORIDA INLAND NAVIGATION DISTRICT  
CHAPTER 66B-1 - COOPERATIVE ASSISTANCE PROGRAM (2011)**

66B-1.001	Purpose.
66B-1.002	Forms.
66B-1.003	Definitions.
66B-1.004	Policy.
66B-1.005	Funds Allocation.
66B-1.006	Application Process.
66B-1.007	Application Form. (Repealed)
66B-1.008	Project Eligibility.
66B-1.009	Project Administration.
66B-1.010	Project Agreement. (Repealed)
66B-1.011	Reimbursement.
66B-1.012	Accountability.
66B-1.013	Acknowledgement.
66B-1.014	Small-Scale Spoil Island Restoration and Enhancement Projects.
66B-1.015	Small-Scale Derelict Vessel Removal Projects.
66B-1.016	Waterways Cleanup Events

**66B-1.001 Purpose.**

Recognizing the importance and benefits of inland navigation channels and waterways, as well as noting problems associated with the construction, continued maintenance and use of these waterways, the Florida Legislature created Section 374.976, F.S. This law authorizes and empowers each inland navigation district to undertake programs intended to alleviate the problems associated with its waterways. The purpose of this rule is to set forth the District's policies and procedures for the implementation of an assistance program under Section 374.976, F.S., for state agencies operating within the District. This program will be known hereafter as the Florida Inland Navigation District's Cooperative Assistance Program.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 12-17-90, Formerly 16T-1.001.*

**66B-1.002 Forms.**

All forms for the administration of this program are available from the District office located at 1314 Marcinski Road, Jupiter, Florida 33477.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 12-17-90, Formerly 16T-1.002.*

**66B-1.003 Definitions.**

The basic terms utilized in this rule are defined as follows:

- (1) "APPLICANT" means an eligible state regional or federal agency submitting an application through this program.
- (2) "APPLICATION" means a project proposal with the required documentation.
- (3) "AUTHORIZED SUBMISSION PERIOD" means the established period for

(22) "PROJECT SPONSOR" means an eligible governmental agency receiving program funds pursuant to an approved application.

(23) "PUBLIC BUILDING" means a building or facility on government owned property that is owned or operated by a governmental entity, or operated by a third party operator. The building or facility must provide waterway related information, public meeting space, or educational services and be open to members of the public on a continual basis without discrimination.

(24) "PUBLIC MARINA" means a harbor complex used primarily for recreational boat mooring or storage, the services of which are open to the general public on a first come, first served basis without any qualifying requirements such as club membership, stock ownership, or differential in price.

(25) "PUBLICLY OWNED COMMERCIAL OR INDUSTRIAL WATERWAY ACCESS" means any publicly owned area specifically designed to be used for staging, launching, or off-loading by commercial or industrial waterway users on a first come, first served, short-term basis, to gain entry to or from the District's waterways to serve the infrastructure needs of the District's waterway users.

(26) "TRIM HEARING" means a public hearing required by Chapter 200, F.S., concerning the tax and budget of the District.

(27) "WATERWAYS" means the Atlantic Intracoastal Waterway, the Okeechobee Waterway, the Barge Canal in Brevard County west of the Port Canaveral Locks, those portions of the Dania Cut-Off Canal and the Hillsboro Canal east of the water control structures, all navigable natural rivers, bays, creeks or lagoons intersected by said waterways and all navigable natural creeks, rivers, bays or lagoons entering or extending from said waterways.

(28) "WATERWAY RELATED ENVIRONMENTAL EDUCATION" means an interdisciplinary holistic process by which the learner: develops an awareness of the natural and manmade environments of waterways; develops knowledge about how the environment of the waterways works; acquires knowledge about the technological, social, cultural, political, and economic relationships occurring in waterway related environmental issues; obtains information on the history, importance, economics, condition and future of the Intracoastal Waterway; and becomes motivated to apply action strategies to maintain a balance between quality of life and quality of the environment of waterways.

*Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 12-17-90, Amended 2-6-97, Formerly 16T-1.003, Amended 5-17-98, 3-21-01, 3-20-03, 3-3-04, 4-21-05, 4-24-06, 4-15-07, 3-25-08, 2-22-10, \_\_-\_\_-11*

#### **66B-1.004 - Policy.**

The following constitutes the policy of the District regarding the administration of the program.

(1) Financial Assistance Eligibility: Eligible federal, state and regional agencies may be provided financial assistance, support or cooperation in planning, acquisition, development, construction, reconstruction, extension, improvement, operation or the maintenance of public navigation, local and regional anchorage management, beach renourishment, public recreation, inlet management, environmental education, maritime management plans, and boating safety projects directly related to the waterways. Eligible projects shall include the acquisition and development of public boat ramps, launching



the terms of the project agreement or this rule, if such non-compliance calls into question the ability of the applicant to complete the project. Failure of a project sponsor to comply with the provisions of this rule or the project agreement shall result in the District declaring the project sponsor ineligible for further participation in the program until such time as compliance has been met to the satisfaction of the District.

(11) Fees: Any public project eligible for District program funds that charges a fee or will charge a fee must demonstrate that the facility will utilize 50% or greater of the collected funds for project maintenance and improvements throughout the anticipated 25-year life of a development project or the design life of other project types, as applicable.

*Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1), (2) FS. History--New 12-17-90, Amended 2-6-97, Formerly 16T-1.004, Amended 5-17-98, 3-31-99, 3-5-00, 3-21-01, 7-30-02, 3-3-04, 4-21-05, 4-1-09, \_ \_ -11.*

### **66B-1.005 - Funds Allocation.**

The Board will allocate funding for this program based upon the District's overall goals, management policies, fiscal responsibilities and operational needs for the upcoming year. If funds are determined to be available for the program, the District will notify potential eligible state and regional agencies of the availability of program funding and the authorized submission period. Applications will be reviewed by the Board utilizing District Form No. 00-25 and No. 00-25 (a thru f) Cooperative Assistance Program Application Evaluation and Rating Worksheet (effective date 4-24-06) hereby incorporated by reference and available from the District office.

(1) Funding Assistance Availability: The Board will allocate funding for this program based upon the District's overall goals, management policies, fiscal responsibilities and operational needs for the upcoming year.

(2) Project Funding Ratio: All financial assistance and support to eligible state and regional agencies shall require, at minimum, equal matching funds from the project sponsor's own budget, with the exception of public navigation projects that meet the provisions of subsection 66B-1.005(6), F.A.C., land acquisition projects in accordance with subsection 66B-1.005(7) and Rule 66B-1.008, F.A.C., and small-scale spoil island restoration and enhancement projects that meet the provisions of Rule 66B-1.014, F.A.C. Applicant's in-house costs are limited pursuant to paragraph 66B-1.007(1)(c), F.A.C. All financial assistance to seaports shall require equal matching funds. The District shall contribute no more than fifty (50) percent of the state share of the cost of an inlet project. The District shall not contribute funding to both the state and local shares of an inlet management project.

(3) Pre-agreement Expenses: The project sponsor shall not commence work on an approved project element prior to the execution of the project agreement unless authorized by the Board during the review and funding approval process. Board authorization of pre-agreement expenses will be given for the commencement of work prior to the execution of a project agreement if the Board determines that there is a benefit to the District, its waterways or its constituents. All project costs must be incurred and work performed within the project period as stipulated in the project agreement unless pre-agreement costs are approved by the Board. Pre-agreement expenses will be approved if they are consistent with the provisions of Rule 66B-1.008, F.A.C., and occur within the fiscal year of the grant application submission (October 1st to September 30th). Pre-agreement expenses, except

through this program will be submitted during the authorized submission period which shall be established by vote of the Board at a scheduled meeting.

(2) Application Form: Florida Inland Navigation District Cooperative Assistance Program Application; Applicant Information – Project Summary, Form No. 90-12 (effective date 4-24-06) is hereby incorporated by reference and available from the District office. All applications for financial assistance and support through this program shall be made on this form. With the exception of projects eligible under the Small-Scale Spoil Island Restoration and Enhancement program, the Small-Scale Derelict Vessel program, and eligible Waterway Cleanup Events, all applications for financial assistance and support through this program from state agencies shall also be made on FIND Form Number 90-12a Project Information (effective date 4-24-06) and shall include a detailed cost estimate submitted on FIND Form No. 90-25 Florida Inland Navigation District Assistance Program Project Cost Estimate (effective date 4-24-06), hereby incorporated by reference and available from the District office. In addition, all applicants shall submit a complete and detailed Project Timeline (FIND FORM No. 96-10) (effective date 4-15-07).

(3) Sponsor Resolution: The project sponsor shall approve the submission of an application by official resolution from its governing board or commission. Said resolution shall be made on FIND Resolution Form No. 90-11 (effective date 10-14-92) hereby incorporated by reference and available from the District office located at 1314 Marcinski Road, Jupiter, Florida 33477.

(4) Attorney's Certification: If the application is for a project that is a land based development project the applicant shall submit an Attorney's Certification of Title, FIND Form Number 93-26 (effective date 3-5-00) hereby incorporated by reference and available from the District office.

(5) Maps and Geographic Information: All applicants shall be required to submit, at minimum, the following geographic information: A County location map, a project location map, a project boundary map, and a clear and detailed site development map for land development projects.

(6) Application Review: If the proposed project is a construction project within a single County, applicants shall obtain the local FIND Commissioner's initials on Form No. 90-16 prior to submitting the application to the District office. It is the applicant's responsibility to make timely arrangements for the local FIND Commissioner's review. If the proposed project is a regional project, a pre-application meeting will be held with District staff prior to formal submission of the application. In the absence of extenuating circumstances outside of the applicant's control as determined by the Board of Commissioners, a single County application shall not be considered complete if it does not include the local FIND commissioner's initials on Form No. 90-16.

Upon receipt in the District office, staff will review the applications for completeness of the informational requirements identified in the Application Checklist, FIND Form Number 90-16 (effective date 7-30-02) hereby incorporated by reference and available from the District office, and for compliance with the eligibility requirements of this rule. When an application is determined by staff to be incomplete or ineligible, Staff will immediately inform the applicant by mail. The applicant will then have until the date established by the Board in the application package to bring the application into compliance. If the applicant fails to provide a complete application in compliance with these rules, the application will not be considered for funding. In order to have a complete

16T-1.006, Amended 3-5-00, 3-21-01, 7-30-02, 3-20-03, 4-21-05, 4-24-06, 4-15-07, 3-25-08. - -11

### **66B-1.008 - Project Eligibility.**

(1) Eligible Projects: Financial assistance and support through this program shall be used to plan or carry out public navigation and anchorage management, public recreation, environmental education, boating safety, acquisition and development of spoil sites and publicly owned commercial/industrial waterway access directly related to the waterways, acquisition and development of public boat ramps, launching facilities and boat docking and mooring facilities, and inlet management, maritime management planning, environmental mitigation and beach renourishment directly related to the waterways.

(a) Program funds may be used for projects such as acquisition planning, development, construction, reconstruction, extension or improvement, of the following for public use on land and water:

1. Public navigation channel dredging;
2. Public navigation aids and markers;
3. Inlet management projects that are a benefit to public navigation in the District;
4. Public shoreline stabilization directly benefiting the District's waterway channels;
5. Acquisition and development of publicly owned spoil disposal site and public commercial/industrial waterway access;
6. Waterway signs and buoys for safety, regulation or information;
7. Acquisition, dredging, shoreline stabilization and development of public boat ramps and launching facilities;
8. Acquisition, dredging, shoreline stabilization and development of public boat docking and mooring facilities;
9. Derelict Vessel Removal;
10. Waterways related environmental education programs and facilities;
11. Public fishing and viewing piers;
12. Public waterfront parks and boardwalks and associated improvements;
13. Waterways boating safety programs and equipment;
14. Beach renourishment on beaches adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project; and
15. Other waterway related projects.

(b) Ineligible Projects or Project Elements: Project costs ineligible for program funding or matching funds will include: contingencies, miscellaneous, reoccurring personnel related costs, land acquisition that is not for additional trailer parking at an existing boat ramp, irrigation equipment, ball-courts, park and playground equipment, and any extraneous recreational amenities not directly related to the waterway such as the following:

1. Landscaping that does not provide shoreline stabilization or aquatic habitat;
2. Restrooms for non-waterway users;
3. Roadways providing access to non-waterway users;
4. Parking areas for non-waterway users;
5. Utilities for non-waterway related facilities;
6. Lighting for non-waterway related facilities;
7. Project maintenance and maintenance equipment;
8. Picnic shelters and furniture;
9. Vehicles to transport vessels;

by the public for the use shown on the plat or map.

(3) Permits: The project sponsor is responsible for obtaining and abiding by any and all federal, state and local permits, laws, proprietary authorizations and regulations in the development and operation of the project. Applicants for construction projects that include elements that require state or federal environmental permits or proprietary authorizations will demonstrate that all required environmental permitting and authorizations will be completed by the District's final TRIM hearing. This demonstration will be by submission of the required environmental permit(s) and authorizations, or by submission of a letter from the agency(s) stating that a permit or authorization is not required. Should the environmental permitting element of an application that has construction elements requiring state or federal environmental permits or authorizations not be completed by the District's final TRIM hearing, the construction portion of the project will not be considered for funding. Whereby funding decisions are completed at the final TRIM hearing, the District will not deviate from the funding schedule to accommodate any application deficiency.

(4) Public Marina Qualifications: All public marina projects funded through this program shall include sewage pumpout facilities for vessels, unless the applicant can demonstrate that inclusion of such a facility is physically, operationally or economically impracticable. All public marina projects funded through this program shall have at least ten percent (10%) of their slips or mooring areas available for transient vessels. Public marina dockage rates shall be within market comparison of the dockage rates of other area marinas. Program funds to public marina projects shall not be utilized for replacement of the facilities if revenues generated by the facility are not allocated to the operation, maintenance and improvement of the public marina facility in accordance with subsection 66B-2.004(10), F.A.C. Certification that revenues generated by a marina facility are exclusively allocated to the operation, maintenance and improvement of the public marine facility will be required to be submitted with the application and, if approved, thereafter on an annual basis using form No. FIND 03-01 (effective date 3-3-04), hereby incorporated by reference and available from the District office.

(5) The District may assist eligible governments with efforts to prepare and implement a comprehensive maritime management plan. The plan shall be utilized by the eligible government to promote and maximize the public benefit and enjoyment of eligible waterways, while identifying and prioritizing the waterway access needs of the community. The plan should not duplicate any existing or ongoing efforts for the same waterway or water shed, nor shall the District participate in any effort that does not address the basic maritime needs of the community.

1) The District shall participate in one plan per County. Existing plans may be updated at reasonable intervals or amended to include waterway areas previously not included in the original effort. Public, government, environmental, industry and other pertinent interest groups shall be solicited and included for input in the planning process.

2) The plan shall be utilized as a tool to provide a minimum 5-year planning analysis and forecast for the maritime needs of the community, and shall include, at minimum, the following:

- a) Public boat ramp & ramp parking inventory and analysis.
- b) Public mooring and docking facility analysis, including day docks and transient slips.

(3) Agreement Modification: All proposed changes to the project agreement must be submitted to the District in writing by the project sponsor accompanied by a statement of justification for the proposed changes. All project agreement amendments shall be approved by the District Board, except that the executive director may approve a minor project agreement amendment for a project within a county with the local District commissioner's concurrence. A minor project amendment shall not change the approved project's category, result in a reallocation of more than 35% of the approved funding of the project among project elements, nor allow for a greater than 35% change in the project scale or scope of work. Project agreement amendments will not include a change to the approved project's location or a change in the approved project's purpose or project type. Agreed changes shall be evidenced by a formal amendment to the project agreement.

(4) Project Reporting: The liaison agent will submit quarterly reports to the project manager summarizing the work accomplished since the last report, problems encountered, percentage of project completion and other appropriate information. These reports shall continue throughout the length of the project period until completion of the project. The report shall be submitted on an Assistance Program Project Quarterly Status Report, Form 95-02 (effective date 7-30-02) hereby incorporated by reference and available at the District office.

(5) Reimbursement Requests: The liaison agent may submit periodic reimbursement requests during the project period. The project manager will approve or disapprove all reimbursement requests. The final payment of program funds will be made upon certified completion of the project.

(6) Project Inspection: Upon reasonable request, the project manager shall have the right to inspect the project and any and all records relating to the project.

(7) Project Completion: The project shall be completed within three (3) years of the beginning of the District's first fiscal year for which the project was approved. If the completion of a project is impacted by a declared state of emergency and the Board waives this rule section, the extension of time granted shall not exceed one additional three (3) year period.

(8) Project Completion Requirements: Upon completion of the project, the liaison agent shall provide the following to the project manager:

(a) A Project Completion Certificate, FIND Form No. 90-13 (effective date 7-30-02) hereby incorporated by reference and available from the District office, which certifies that the project was completed in accordance with the project agreement and the final project plans.

(b) A final reimbursement request accompanied by all required billing statements and vouchers.

(c) Photograph(s) showing the installation of the sign required by Rule 66B-1.013, F.A.C.

(d) Photograph(s) of the completed project clearly showing the program improvements.

(9) Project Completion Review: The project manager will review the project completion package and will authorize or reject the final reimbursement payment which will include all retained funds from previous requests.

**66B-1.012 - Accountability.**

The following procedures shall govern the accountability of program funds:

(1) Accounting: Each project sponsor is responsible for maintaining an accounting system which meets generally accepted accounting principles and for maintaining such financial records as necessary to properly account for all program funds.

(2) Quarterly Reports: The project sponsor shall submit quarterly project status reports to FIND in accordance with subsection 66B-1.009(4), F.A.C.

(3) Completion Certification: All required final completion certification documents and materials as outlined in subsection 66B-1.009(8), F.A.C., of this rule shall be submitted to the District prior to final reimbursement of program funds.

(4) Auditing: All project records including project costs shall be available for review by the District, or by an auditor selected by the District, for 3 years after completion of the project. Any such audit expenses incurred shall be borne entirely by the project sponsor.

(5) Project Records: The project sponsor shall retain all records supporting project costs for three years after either the completion of the project or the final reimbursement payment, whichever is later, except that should any litigation, claim, or special audit arise before the expiration of the three year period, the project sponsor shall retain all records until the final resolution of such matters.

(6) Repayment: If it is found by any State, County, FIND, or independent audit that program funds have not been used in accordance with this rule and applicable laws, the project sponsor shall repay the misused program funds to the District.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 12-17-90, Formerly 16T-1.012, Amended 7-30-02.*

**66B-1.013 - Acknowledgement.**

The project sponsor shall erect a permanent sign, approved by the District, at the entrance to the project site which indicates the District's participation in the project. This sign shall contain the FIND logo. In the event that the project sponsor erects a temporary construction sign, this sign shall also recognize the District's participation. If the final product of the project is a report, study or other publication, the District's sponsorship of that publication shall be prominently indicated at the beginning of the publication. If the project results in an educational display, the District's logo and a statement of the District's participation in the project shall be contained in the display.

*Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 12-17-90, Formerly 16T-1.013, Amended 2-22-10.*

**66B-1.014 - Small-Scale Spoil Island Restoration and Enhancement Projects.**

Proposals shall be accepted for the restoration or enhancement of spoil islands and natural islands within the District's waterways for recreational, navigational, educational, and environmental purposes. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure – A Request for Proposals procedure will be used to request proposals for consideration. Proposals shall follow the format described in FIND Document #03-02 Call for Proposals – Small-Scale Spoil Island Restoration and

eligibility under these program rules.

(3) The program must be sponsored by an eligible government agency or not-for-profit organization.

(4) District funding shall be limited to \$20,000 per county, per year, provided on a reimbursement basis only. The limitation on pre-agreement expenses may be waived by the Board in accordance with subsection 66B-1.005(3), F.A.C.

(5) The eligible applicant must provide the remaining matching funds for project completion. In no case shall the District's cost-share contribution exceed 75% of the total project costs. In-house project management or administration costs are not eligible costs or matching costs.

(6) The derelict vessel must be located in the District's Waterways, as defined in Rule 66B-1.003, F.A.C. The applicant shall include a map clearly delineating the location of all vessels included in the application.

(7) The District shall be recognized when possible in all written, audio or video advertising and promotions as a participating sponsor of the program.

(8) The funding provided by the District shall only be allocated for removal of derelict vessels. The District is providing program reimbursement funds only and shall be held harmless with regards to the activities initiated by the applicant.

(9) The applicant shall be responsible for all maintenance, management, disposal and operating expenses associated with the program.

(10) Funds derived from the sale of any derelict vessels or vessel parts removed through this grant program must be reinvested into the applicant's derelict vessel removal program.

(11) The District Board shall make all final decisions concerning the provision of funding for this program.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 4-24-06, Amended 4-15-07, 3-25-08, -- --11.*

### **66B-2.016 Waterways Cleanup Events.**

Proposals shall be accepted for financial assistance for the organized removal of refuse within the District's waterways. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

- (1) **Application Procedure:** Prior to the event, a request for funding shall be submitted to the District by means of a cover letter detailing the occurrence of the cleanup, contact information, a map of the cleanup locations and the general parameters of the event. In addition, the Applicant will submit a detailed budget clearly delineating the expenditure of all District funds, as well as the overall general budget of the event. Proposals may be submitted to the District and considered by the Board at any time during the year.
- (2) **Availability:** The District shall fund a maximum of one clean-up program per waterway, per year within a county, with exception to the provisions of items (8) through (10), below.
- (3) **Applicant Eligibility:** The clean-up program must be sponsored by a government agency or a registered not-for-profit corporation.

## CHAPTER 66B-2 — WATERWAYS ASSISTANCE PROGRAM (2011)

66B-2.001	Purpose.
66B-2.002	Forms.
66B-2.003	Definitions.
66B-2.004	Policy.
66B-2.005	Funds Allocation.
66B-2.006	Application Process.
66B-2.0061	Disaster Relief Applications.
66B-2.007	Application Form. (Repealed)
66B-2.008	Project Eligibility.
66B-2.009	Project Administration.
66B-2.010	Project Agreement. (Repealed)
66B-2.011	Reimbursement.
66B-2.012	Accountability.
66B-2.013	Acknowledgement.
66B-2.014	Small-Scale Spoil Island Restoration and Enhancement Projects.
66B-2.015	Small-Scale Derelict Vessel Removal Projects.
66B-2.016	Waterways Cleanup Events.

### **66B-2.001 - Purpose.**

Recognizing the importance and benefits of inland navigation channels and waterways, as well as noting problems associated with the construction, continued maintenance and use of these waterways, the Florida Legislature created Section 374.976, F.S. This law authorizes and empowers each inland navigation district to undertake programs intended to alleviate the problems associated with its waterways. The purpose of this rule is to set forth the District's policy and procedures for the implementation of an assistance program under Section 374.976, F.S., for local governments, member counties and navigation related districts within the District. This program will be known hereafter as the Florida Inland Navigation District's Waterways Assistance Program.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Formerly 16T-2.001.*

### **66B-2.002 - Forms.**

All forms for the administration of this program are available from the District office located at 1314 Marcinski Road, Jupiter, Florida 33477.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Formerly 16T-2.002.*

### **66B-2.003 - Definitions.**

The basic terms utilized in this rule are defined as follows:

- (1) "APPLICANT" means an eligible governmental agency submitting an application through this program.
- (2) "APPLICATION" means a project proposal with the required documentation.
- (3) "AUTHORIZED SUBMISSION PERIOD" means the established period for



monitoring the performance of the Project and compliance with the project agreement.

(23) "PROJECT PERIOD" means the approved time during which costs may be incurred and charged to the funded project.

(24) "PROJECT SPONSOR" means an eligible governmental agency receiving program funds pursuant to an approved application.

(25) "PUBLIC BUILDING" means a building or facility on government owned property that is owned or operated by a governmental entity, or operated by a third party operator. The building or facility must provide waterway related information, public meeting space, or educational services and be open to members of the public on a continual basis without discrimination.

(26) "PUBLIC MARINA" means a harbor complex used primarily for recreational boat mooring or storage, the services of which are open to the general public on a first come, first served basis without any qualifying requirements such as club membership, stock ownership, or differential in price.

(27) "PUBLICLY OWNED COMMERCIAL OR INDUSTRIAL WATERWAY ACCESS" means any publicly owned area specifically designed to be used for staging, launching, or off-loading by commercial or industrial waterway users on a first come, first served, short-term basis, to gain entry to or from the District's waterways to serve the infrastructure needs of the District's waterway users.

(28) "TRIM HEARING" means a public hearing required by Chapter 200, F.S., concerning the tax and budget of the District.

(29) "WATERWAYS" means the Atlantic Intracoastal Waterway, the Okeechobee Waterway, the Barge Canal in Brevard County west of the Port Canaveral Locks, those portions of the Dania Cut-Off Canal and the Hillsboro Canal east of the water control structures, all navigable natural rivers, bays, creeks or lagoons intersected by said waterways and all navigable natural creeks, rivers, bays or lagoons entering or extending from said waterways.

(30) "WATERWAY RELATED ENVIRONMENTAL EDUCATION" means an interdisciplinary holistic process by which the learner: develops an awareness of the natural and manmade environments of waterways; develops knowledge about how the environment of the waterways works; acquires knowledge about the technological, social, cultural, political, and economic relationships occurring in waterway related environmental issues; and, becomes motivated to apply action strategies to maintain balance between quality of life and quality of the environment of waterways.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 12-17-90, Amended 9-2-92, 2-6-97, Formerly 16T-2.003, Amended 5-17-98, 3-21-01, 3-20-03, 3-3-04, 4-21-05, 4-24-06, 4-15-07, 3-25-08.*

#### **66B-2.004 - Policy.**

The following constitutes the policy of the District regarding the administration of the program:

(1) Financial Assistance Eligibility: Financial assistance, support and cooperation may be provided to eligible governmental agencies for approved projects as follows:

(a) Member counties may be provided financial assistance, support or cooperation in planning, acquisition, development, construction, reconstruction, extension, improvement, operation or the maintenance of public navigation, local and regional

approve the proposed boating speed zone.

(6) **Project Maintenance:** The project sponsor shall be responsible for the operation, maintenance, and management of the project for the anticipated life of the project and shall be responsible for all expenses required for such purposes. The project shall be maintained in accordance with the standards of maintenance for other similar local facilities and in accordance with applicable health standards. Project facilities and improvements shall be kept reasonably safe and in reasonable repair to prevent undue deterioration and to encourage public use. The project sponsor shall have full legal authority and financial ability to operate and maintain the project facilities.

(7) **Education Facilities and Programs:** Waterways related environmental education facilities and programs sponsored by the District shall occur at specially designated environmental education facilities located adjacent and contiguous to the waterways. It is the District's intent to consolidate its environmental education efforts in the least number of facilities within an area that will adequately serve the education needs of that area of the District.

(8) **Public Information Availability:** Public information produced with assistance from this program shall not be copyrighted and shall be provided free of cost, except for the cost of reproduction, to the public.

(9) **Third-Party Project Operators:** Projects that are being operated by a third party shall have sufficient oversight by the eligible project sponsor as determined by the Board. Such oversight, at a minimum, will include a project liaison that is a staff member of the eligible project sponsor, and oversight of the operating hours and admission fees of the facility by the eligible project sponsor through a legal agreement. All third party projects shall be open to the public in accordance with this rule.

(10) **Non-compliance:** The District shall terminate a project agreement and demand return of program funds disbursed to the project sponsor for non-compliance with any of the terms of the project agreement or this rule, if such non-compliance calls into question the ability of the applicant to complete the project. Failure of a project sponsor to comply with the provisions of this rule or the project agreement shall result in the District declaring the project sponsor ineligible for further participation in the program until such time as compliance has been met to the satisfaction of the District.

(11) **Fees:** Any public project eligible for District program funds that charges a fee or will charge a fee must demonstrate that the facility will utilize 50% or greater of the collected funds for project maintenance and improvements throughout the anticipated 25-year life of a development project or the design life of other project types, as applicable.

*Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1), (2) FS. History—New 12-17-90, Amended 2-3-94, 2-6-97, Formerly 16T-2.004, Amended 5-18-98, 3-31-99, 5-25-00, 3-21-01, 7-30-02, 3-3-04, 4-21-05, 4-1-09, 2-22-10.*

#### **66B-2.005 - Funds Allocation.**

The Board will allocate funding for this program based upon the District's overall goals, management policies, fiscal responsibilities and operational needs for the upcoming year. If funds are determined to be available for the program, the District will notify potential eligible governmental agencies of the availability of program funding. Applications will be reviewed by the Board utilizing District Forms No. 91-25 and 91-25 (a thru f) Waterways Assistance Program Application Evaluation and Rating Worksheet (effective

to the provisions of Chapter 200, F.S. The determination by the Board to provide assistance funding on a multi-year basis can be made at any time during the application review process. All approved multi-year projects are limited to a maximum of two (2) additional funding requests.

(5) Seaport Funding Eligibility: Financial assistance to seaports may exceed the proportional share of the District's ad valorem tax collections as set forth in subsection 66B-2.005(1), F.A.C., from the county in which such seaport is located if the seaport can demonstrate that a regional benefit occurs from the port's activities. Financial assistance to a seaport project that demonstrates a regional benefit shall not exceed an amount equal to (i) the proportional share of the District's ad valorem tax collections as set forth in subsection 66B-2.005(1), F.A.C., from the counties where the benefit is demonstrated less (ii) funding allocated in the same fiscal year to all other local government projects funded in those counties.

(6) Inlet Management and Beach Renourishment: Projects and project elements in the categories of inlet management and beach renourishment shall be subject to the following provisions. The District shall contribute no more than fifty percent of the local share of the cost of the project. The District shall not contribute funding to both the state and local shares of an inlet management or beach renourishment project. Funding for the construction phase of an inlet management or beach renourishment project may be approved by the District Board for a multiple year period subject to budgeting and allocation pursuant to the provisions of Chapter 200, F.S. Additionally the following provisions shall be met for inlet management or beach renourishment projects:

(a) Inlet Management: Inlet management projects shall benefit public navigation within the District and shall be consistent with Department of Environmental Protection approved inlet management plans and the statewide beach management plan pursuant to Section 161.161, F.S. Inlet management projects that are determined to be consistent with Department of Environmental Protection approved inlet management plans are declared to be a benefit to public navigation.

(b) Beach Renourishment: All projects in this category shall be consistent with the statewide beach management plan. Beach renourishment projects shall only include those beaches that have been adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project. The determination of beach areas that are adversely impacted by navigation for the purposes of this program shall be made by Department of Environmental Protection approved inlet management plans. If state funding is not provided for a beach project, public access with adequate parking must be available in accordance with Chapter 161, F.S.

(7) Public Navigation: Projects or project elements in the category of public navigation that will qualify for up to seventy-five percent (75%) program funds must be within the Intracoastal Right-of-Way (ROW), or provide public navigation channel access to public launching, mooring or docking facilities. In addition, the following shall apply:

(a) Navigation channel dredging: The project sponsor must demonstrate that the source of channel sedimentation has been identified and is in the process of, or has been controlled, or that the frequency and amount of shoaling is such that dredging will provide an improvement to the channel that will last for twenty (20) years or more and therefore is more cost effective than identifying and correcting the cause of shoaling, or

available from the District office.

(5) Maps and Geographic Information: All applicants shall be required to submit, at minimum, the following geographic information: A County location map, a project location map, a project boundary map, and a clear and detailed site development map for land development projects.

(6) Application Review: Applicants shall obtain the local FIND Commissioner's initials on Form No. 90-26 prior to submitting the application to the District office. It is the applicant's responsibility to make timely arrangements for the local FIND Commissioner's review. In the absence of extenuating circumstances outside of the applicant's control as determined by the Board of Commissioners, an application shall not be considered complete if it does not include the local FIND commissioner's initials on Form No. 90-26. Upon receipt in the District office, staff will review the applications for completeness of the informational requirements identified in the Application Checklist, FIND Form Number 90-26 (effective date 7-30-02), and for compliance with the eligibility requirements of this rule. When an application is determined by staff to be incomplete or ineligible, staff will immediately inform the applicant by mail. The applicant will then have until the date established by the Board in the application package to bring the application into compliance. If the applicant fails to provide a complete application in compliance with these rules, the application will not be considered for funding. In order to have a complete application, the applicant shall not only submit the forms required under Rule 66B-2.006, F.A.C., and any other information requirements identified in the Application Checklist (FIND Form Number 90-26), but such forms and other submitted information must be completely filled out, executed as applicable, and also establish compliance with Chapter 66B-2, F.A.C.

(7) Interlocal Agreements: Applications that the Board determines will directly benefit the maintenance of the Atlantic Intracoastal Waterway channel as documented by the District's long range dredged material management plans, will directly benefit the maintenance of the Okeechobee Waterway channel as documented by the District's long range dredged material management plan, will directly benefit the maintenance or improvement of District property, right-of-way or navigation interests, or have multiple funding partners including the Corps of Engineers as the project manager can qualify for project assistance through an interlocal agreement pursuant to Chapter 163, F.S., or Section 374.984(6)(a), F.S. District staff will identify these applications and present them to the Board for their determination as to funding. Interlocal agreement projects shall comply with all other provisions of this rule, except for pre-agreement expenses, permitting and property control requirements.

(8) Application Presentations: Applications determined to be complete and in compliance with this rule will be forwarded to the Board for review and then scheduled for presentation to the Board at a scheduled meeting of the Board. Applicants can decline to make a presentation to the Board by submitting a written request.

(9) Application Evaluation and Rating Score: Following the presentations, the Board will review the applications and evaluate them using the Waterways Assistance Program Application Evaluation and Rating Worksheets No. 91-25 (a thru f) for Waterways Assistance Program applications, and 93-25 (a, b and c) Waterways Assistance Program Navigation Related Districts applications. The total points awarded to each application by the Commissioners will be averaged to determine an application's final rating score. The

6. Waterway signs and buoys for safety, regulation or information;
7. Acquisition, dredging, shoreline stabilization and development of public boat ramps and launching facilities;
8. Acquisition, dredging, shoreline stabilization and development of public boat docking and mooring facilities;
9. Derelict Vessel Removal;
10. Waterways related environmental education programs and facilities;
11. Public fishing and viewing piers;
12. Public waterfront parks and boardwalks and associated improvements;
13. Waterways boating safety programs and equipment;
14. Beach renourishment on beaches adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project; and
15. Other waterway related projects.

(b) Ineligible Projects or Project Elements. Project costs ineligible for program funding or matching funds will include: contingencies, miscellaneous, reoccurring personnel related costs, irrigation equipment, ball-courts, park and playground equipment, and any extraneous recreational amenities not directly related to the waterway such as the following:

1. Landscaping that does not provide shoreline stabilization or aquatic habitat;
2. Restrooms for non-waterway users;
3. Roadways providing access to non-waterway users;
4. Parking areas for non-waterway users;
5. Utilities for non-waterway related facilities;
6. Lighting for non-waterway related facilities;
7. Project maintenance and maintenance equipment;
8. Picnic shelters and furniture;
9. Vehicles to transport vessels;
10. Operational items such as fuel, oil, etc.
11. Office space that is not incidental and necessary to the operation of the main eligible public building; and
12. Conceptual project planning, including: cost-benefit analysis, public surveys, opinion polls, public meetings, and organizational conferences.

(c) Project Elements with Eligibility Limits: Subject to approval by the Board of an itemized expense list:

1. The following project costs will be eligible for program funding or as matching funding if they are performed by an independent contractor:
  - a. Project management, administration and inspection;
  - b. Design, permitting, planning, engineering or surveying costs for completed construction project;
  - c. Restoration of sites disturbed during the construction of an approved project;
  - d. Equipment costs.

Before reimbursement is made by the District on any of the costs listed in subparagraph 1. above, a construction contract for the project, approved and executed by the project sponsor and project contractor must be submitted to the District.

2. Marine law enforcement and other vessels are eligible for a maximum of \$30,000 in initial District funding. All future replacement and maintenance costs of the vessel and

demonstrate that inclusion of such a facility is physically, operationally or economically impracticable. All public marina projects funded through this program shall have at least ten percent (10%) of their slips or mooring areas available for transient vessels. Public marina dockage rates shall be within market comparison of the dockage rates of other area marinas. Program funds to public marina projects shall not be utilized for replacement of the facilities if revenues generated by the facility are not allocated to the operation, maintenance and improvement of the public marina facility in accordance with subsection 66B-2.004(11), F.A.C.

(5) The District may assist eligible local governments with efforts to prepare and implement a comprehensive maritime management plan. The plan shall be utilized by the eligible government to promote and maximize the public benefit and enjoyment of eligible waterways, while identifying and prioritizing the waterway access needs of the community. The plan should not duplicate any existing or ongoing efforts for the same waterway or water shed, nor shall the District participate in any effort that does not address the basic maritime needs of the community.

(a) The District shall participate in one plan per County. Existing plans may be updated at reasonable intervals or amended to include waterway areas previously not included in the original effort. Public, government, environmental, industry and other pertinent interest groups shall be solicited and included for input in the planning process.

(b) The plan shall be utilized as a tool to provide a minimum 5-year planning analysis and forecast for the maritime needs of the community, and shall include, at minimum, the following:

1. Public boat ramp & ramp parking inventory and analysis.
2. Public mooring and docking facility analysis, including day docks and transient slips.
3. Commercial and working waterfront identification and needs analysis.
4. The identification, location, condition and analysis of existing and potential navigation channels.
5. An inventory and assessment of accessible public shorelines.
6. Public Waterway transportation needs.
7. Environmental conditions that affect boat facility siting, a current resource inventory survey, and restoration opportunities.
8. Economic conditions affecting the boating community and boating facilities.
9. Acknowledgment and coordination with existing data and information, including an emphasis on the Intracoastal Waterway.

3) Projects requested for assistance program funding shall be consistent with the applicant's maritime management plan. The applicant should utilize the plan to assist in prioritizing waterway improvement projects.

(6) Final Decisions: The Board will make all final decisions on the eligibility of a Project or specific project costs.

requests during the project period in accordance with Rule 66B-2.011, F.A.C. The project manager will approve or disapprove all reimbursement requests. The final payment of program funds will be made upon certified completion of the project by the District.

(6) Project Inspection: Upon reasonable request, the project manager shall have the right to inspect the project and any and all records relating to the project.

(7) Project Completion: The project shall be completed within three (3) years of the date of the beginning of the District's first fiscal year for which the project was approved. If the completion of a project is impacted by a declared state of emergency and the Board waives this rule section, the extension of time granted shall not exceed one additional three (3) year period.

(8) Project Completion Requirements: Upon completion of the project, the liaison agent shall provide the following to the project manager:

(a) A Project Completion Certificate, FIND Form No. 90-13 (effective date 7-30-02), hereby incorporated by reference and available from the District office, which certifies that the project was completed in accordance with the project agreement and the final project plans.

(b) A final reimbursement request accompanied by all required billing statements and vouchers.

(c) Photograph(s) showing the installation of the sign required by Rule 66B-2.013, F.A.C.

(d) Photograph(s) of the completed project clearly showing the program improvements.

(9) Project Completion Review: The project manager will review the project completion package and will authorize or reject the final reimbursement payment which will include all retained funds from previous requests.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Formerly 16T-2.009, Amended 3-21-01, 7-30-02.*

### **66B-2.011 - Reimbursement.**

The District shall release program funds in accordance with the terms and conditions set forth in the project agreement. This release of program funds shall be on a reimbursement only basis. The District shall reimburse the project sponsor for project costs expended on the project in accordance with the project agreement. Project funds to be reimbursed will require the submission of a Reimbursement Request Form and required supporting documents, FIND Form No. 90-14 (effective date 7-30-02) hereby incorporated by reference and available from the District office.

(1) Authorized Expenditures: Project funds shall not be spent except as consistent with the project agreement cost estimate that was approved by the Board, which shall be an attachment to the project agreement. This cost estimate will establish the maximum funding assistance provided by the District and the percentage of funding provided by each party to the project. The District will pay the lesser of:

(a) The percentage total of project funding that the Board has agreed to fund, or

(b) The maximum application funding assistance amount.

(2) Phase I Reimbursement: In accordance with these rules, reimbursement cannot be made on a Phase I application until a construction contract is executed by the applicant

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 12-17-90, Formerly 16T-2.012, Amended 7-30-02*

### **66B-2.013 - Acknowledgement.**

The project sponsor shall erect a permanent sign, approved by the District, at the entrance to the project site which indicates the District's participation in the project. This sign shall contain the FIND logo. In the event that the project sponsor erects a temporary construction sign, this sign shall also recognize the District's participation. If the final product of the project is a report, study or other publication, the District's sponsorship of that publication shall be prominently indicated at the beginning of the publication. If the project results in an educational display, the District's logo and a statement of the District's participation in the project shall be contained in the display.

*Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 12-17-90, Formerly 16T-2.013, Amended 2-22-10.*

### **66B-2.014 - Small-Scale Spoil Island Restoration and Enhancement Projects.**

Proposals shall be accepted for the restoration or enhancement of spoil islands and natural islands within the District's waterways for recreational, navigational, educational, and environmental purposes. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure – A Request for Proposals procedure will be used to request proposals for consideration. Proposals shall follow the format described in FIND Document #03-02, Call for Proposals – Small-Scale Spoil Island Restoration and Enhancement Program (effective date 7-30-02), hereby incorporated by reference and available from the District office. Proposals may be submitted to the District and considered by the Board at any time during the year.

(2) Matching Funds: Small-scale spoil island restoration and enhancement may qualify for up to ninety percent (90%) program funds. The applicant's ten percent (10%) matching funds may include in-kind contribution pursuant to paragraph 66B-2.014(4)(b), F.A.C.

(3) Eligibility: All proposals must meet the following eligibility criteria to be considered for funding:

(a) Management Plan Compliance: Projects shall be in compliance with the provisions of any Spoil Island Management Plans or other management plans that govern the Project site.

(b) Property Control: The Project Sponsor must have written property rights on the Project site to construct and maintain the Project for a minimum of five years. Such property rights can be in the form of a lease, interlocal agreement, use agreement or other legal form approved by the District. The applicant shall include a map clearly delineating the location of all proposed work included in the application.

(4) Funds Allocation: Funds shall be allocated pursuant to Rule 66B-2.005, F.A.C., subject to the exceptions identified in this rule, and with the following additions:

(a) The District shall fund a maximum of up to \$7,500 per project, not to exceed \$22,500 per County, per fiscal year.



(10) Funds derived from the sale of any derelict vessels or vessel parts removed through this grant program must be reinvested into the applicant's derelict vessel removal program.

(11) The District Board shall make all final decisions concerning the provision of funding for this program.

*Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History--New 4-24-06, Amended 4-15-07, 3-25-08.*

### **66B-2.016 Waterways Cleanup Events.**

Proposals shall be accepted for financial assistance for the organized removal of refuse within the District's waterways. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

- (1) **Application Procedure:** Prior to the event, a request for funding shall be submitted to the District by means of a cover letter detailing the occurrence of the cleanup, contact information, a map of the cleanup locations and the general parameters of the event. In addition, the Applicant will submit a detailed budget clearly delineating the expenditure of all District funds, as well as the overall general budget of the event. Proposals may be submitted to the District and considered by the Board at any time during the year.
- (2) **Availability:** The District shall fund a maximum of one clean-up program per waterway, per year within a county, with exception to the provisions of items (8) through (10), below.
- (3) **Applicant Eligibility:** The clean-up program must be sponsored by a government agency or a registered not-for-profit corporation.
- (4) **Funding:** District funding shall be limited to \$5,000.00 per waterway, per county, except for the provisions of items (8) through (10), below.
- (5) The District shall be recognized in all written, on-line, audio or video advertising and promotions as a participating sponsor of the clean-up program.
- (6) **Funding Eligibility:** The funding provided by the District shall only be allocated to reimburse the applicant for out of pocket expenditures related to specific cleanup program expenses such as trash bags, trash collection, haul and landfill fees, gloves, advertising, T-shirts, and related expenses. The funding provided by the District shall not be allocated for parties, meetings, food or beverages.
- (7) The District Board shall make all final decisions concerning the provision of funding for a clean-up program.

In addition to the requirements stated above, a cleanup program implementing all of the following additional incentives will qualify for up to additional \$5,000 in clean up funds.

- (8) The clean-up program budget must provide equal or greater matching funds for all Navigation District funding.
- (9) The applicant shall tally and report the composition and location of the waterway-related debris, with the goal to show definitive progress in the amount of refuse

## **CHAPTER 66B-3 — LAND ACQUISITION PROCEDURES**

66B-3.001 Purpose.

66B-3.002 Definitions.

66B-3.003 Noticing Requirements.

### **PART I VOLUNTARY, NEGOTIATED LAND ACQUISITION PROCEDURES**

66B-3.004 General Requirements.

66B-3.005 Title Reports.

66B-3.006 Appraisal Map or Survey.

66B-3.007 Appraisal Procedures.

66B-3.008 Determining the Maximum Amount.

66B-3.009 Appraiser Selection.

66B-3.010 Negotiations.

66B-3.011 Purchase Instruments.

66B-3.012 Closing.

66B-3.013 Multi-Party Acquisitions.

### **PART II EXCHANGE PROCEDURES**

66B-3.014 Property Exchanges.

### **PART III DONATION PROCEDURES**

66B-3.015 Property Donations.

### **PART IV CONDEMNATION PROCEDURES**

66B-3.016 Acquisition Through Condemnation.

#### **66B-3.001 — Purpose.**

The Florida Inland Navigation District, as the designated state or local sponsor of the Atlantic Intracoastal, Intracoastal and a portion of the Okeechobee Waterway projects is required by congressional acts and by s. 374, F.S., to provide all lands, free of cost, required by the federal government for the construction, operation and

title opinion shall be as required by the applicable contract between the District and the landowner(s). The terms "Title Policy" and "Title Opinion" are included within this definition.

(5) "Fee Appraiser" means the person performing an appraisal of property for the District who is a "State Certified Appraiser" in accordance with this rule and who holds a MAI designation.

(6) "Land" or "Property" means the interest in real property to be acquired, together with all appurtenances.

(7) "Landowner" or "Owner" or "Seller" means the owner of the land or his authorized agent.

(8) "Market Value" means the most probable price in cash or terms equivalent to cash for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently and knowledgeably, and assuming that neither is under undue duress.

(9) "Option Agreement" means a purchase instrument which becomes binding on both parties at the time of execution, but subject to Board approval and to exercise of an option or options.

(10) "Purchase Agreement" means a contract to purchase property which becomes binding on both parties at the time of execution, but subject to Board approval.

(11) "Purchase Instrument" means the various types of contracts to purchase property, including purchase agreements, option agreements, exchange agreements and other forms of such agreements.

(12) "State Certified Appraiser" means a real estate appraiser who has been certified by the State under the provisions of Chapter 475, F.S.

(13) "Title Commitment" means a written agreement binding a title insurance company to provide a policy insuring marketability of title for a specified time in the name of the District in the amount of the purchase price, or other appropriate value, complying with the requirements of the applicable form(s) approved for use in the State of Florida by the Department of Insurance and further complying with

meet the public purpose for which the acquisition is being proposed. If the District determines that no suitable state-owned lands exist, it may proceed to acquire the property by employing this rule and all available statutory authority for acquisition.

(4) All conveyances to the District of fee title in land shall be by no less than a special warranty deed, unless the conveyance is from another governmental agency, or, if a gift or donation is made by quitclaim deed and the Board or its designee, determines that accepting such quitclaim deed is adequate to convey fee title in the land to the District, with the District basing such determination on its review of title reports and receipt of adequate title insurance coverage. The District may accept a quitclaim deed to aid in clearing title or boundary questions.

Specific Authority 374.984(3) FS. Law Implemented 374.984(1) — (3) FS. History — New 8-17-99.

#### **66B-3.005 — Title Reports.**

(1) In order for the District to obtain accurate appraisals, the District shall obtain an adequate legal description of the property to be acquired sufficient to inform the District and the fee appraisers of the boundaries of the property so that the fee appraiser can determine the status of ownership, encumbrances, exceptions, reservations, previous ownership history, and tax assessment history.

(2) Final evidence of marketable title shall be provided prior to the conveyance of title. The form and content of such evidence of marketable title is subject to the approval of the District in order to assure that the District's interests are fully protected. If a title policy is to be furnished as evidence of marketable title, the final policy must be preceded by a title commitment. Title insurers issuing title policies, abstractors preparing abstracts, and attorneys issuing marketability opinions must be licensed in the State of Florida, in order to assure that the District's interests are fully protected.

(3) The District shall waive the requirement of the evidence of marketability for acquisition of property assessed by the county property appraiser at \$10,000 or

considered to be non-compensable, minimum appraisal requirements that apply, required appraisal forms or formats, and a certified survey or appraisal map.

(3) The appraisal report shall state any assumption made by the appraiser in determining market value and shall document and adequately support the fee appraiser's estimate or conclusion as to value. The report shall include a description of the location, size, shape, topography, access, highway or water frontage, and present zoning of the property. It shall include a description of utilities, if any, and a detailed description of any appurtenances. The report shall address other factors relevant to the development potential of the property including, but not limited to, local government land use restrictions and permit moratoria, environmental sensitivity of the property, and the likelihood of obtaining any pending or required local, state or federal permits. In determining land value, the fee appraiser shall primarily consider the present market value of the property. This market value, as much as practicable, should be based on comparable arm's length sales of similar property. If the fee appraiser uses comparable sales in determining land value, he shall thoroughly describe each such sale including the date of sale, a brief legal description, the present use, the highest and best use, the official record book and page where the transaction is recorded, the grantor and grantee, the purchase price, the terms and conditions of the sale, and when and with whom verified. The fee appraiser also shall consider the present use of the subject property, taking into consideration any local or state land use regulation and any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The report also shall address the highest and best use to which the property can be expected to be put in the immediate future. The term "immediate future" as used in this section means a period of time not to exceed five (5) years. In addition, the report also shall consider the cost of the property and the present

required by law, the maximum value shall be the higher of the appraisals, regardless of their divergence.

(2) If two appraisals are required by law and their values do not differ significantly, the maximum amount that may be paid by the District for the parcel shall be the higher value indicated in the two approved appraisals.

(3) If a third appraisal is obtained and approved, the maximum amount that may be paid for the parcel shall be the value contained in the higher of the two closest appraisals as long as the two closest appraisals do not differ significantly. If the two closest appraisals differ significantly, one hundred and twenty (120) percent of the lower of the two appraisals shall be the maximum value.

(4) No purchase offer by the District shall exceed the value for that parcel as determined pursuant to the highest approved appraisal or the value determined pursuant to these rules, whichever value is less, except under the following circumstances:

(a) The District has unsuccessfully attempted to negotiate a purchase, pursuant to the price restrictions in this subparagraph, for a period of two years after the date of the District's first written offer on all or a substantial part of the parcel, during which there have been at least two bona fide offers at a purchase price at or within ten (10) percent below the limits prescribed by this subparagraph. The Board shall waive the two year period in cases in which it has directed the District to exercise eminent domain authority;

(b) The Board determines that the parcel meets the requirements for acquisition by eminent domain and that the cost of acquisition by eminent domain, including jury determination of compensation and other costs and fees provided for in chapter 73 or 74 F.S., is likely to exceed the highest approved appraisal value of the parcel as otherwise determined pursuant by this rule. In this case, the total purchase price may not exceed one hundred and twenty five (125) percent of the limits otherwise prescribed by this subparagraph. The decision to acquire a parcel pursuant to subparagraphs (a) and (b) must be made by a vote of a majority of the Board.

(b) The District shall notify by direct mail those individuals whose names appear on the list of approved appraisers who have expressed a willingness to work in the specific area of an appraisal project.

(c) The District will accept and review proposals and select appraisers in response to requests for proposals. Proposals shall be evaluated to determine:

1. The appraiser's experience in appraising similar property within the neighborhood of the subject; and
2. The appraiser's experience in appraising similar property outside the neighborhood of the subject; and
3. The appraiser's proposed time period for delivery of the appraisal; and
4. The appraiser's proposed fee; and
5. The appraiser's current or anticipated workload; and
6. The appraiser's responses to any other specialized requirements or questions outlined in the request for proposal.

Specific Authority 374.984(3) FS. Law Implemented 374.984(1) — (3) FS. History — New 8-17-99.

#### **66B-3.010 — Negotiations.**

(1) The lack of received and approved appraisals shall not prevent the District from negotiating and entering into a purchase agreement, so long as the purchase agreement provides that the final purchase price shall be established by the approved appraisals. All owner contact shall be documented in the appropriate acquisition file of the acquiring agency. Initial contact with the landowner by the acquiring agency may be established prior to negotiations, provided that such contact is limited to the following:

- (a) To inform the owner of the land acquisition program under which the project is being considered, and to request the owner's permission for the District to inspect the property in order to determine its suitability for the purposes of the District.
- (b) To ascertain or confirm the owner's interest in conveying the property to the District.

- (c) Evidence of the marketability of the title.
  - (d) The approved appraisal reports.
  - (e) A letter from the Department of Environmental Protection's Division of State Lands stating that the inventory of existing State-owned lands was examined and contains no suitable available land for the District's use.
  - (f) A written statement by the District outlining the public purpose for which the acquisition is being made, citing statutory authority.
  - (g) A written statement signed by the owner confirming the owner's relationship with his agent, if any.
  - (h) A written confirmation by the District of the source and availability of funding for the acquisition.
  - (i) A copy of the current certified survey or appraisal map, approved by the District.
  - (j) All the details pertinent to the acquisition not included in this list or in the purchase instrument.
- (4) The District shall submit the proposed acquisition to the Board for approval. The District shall supply a copy of the proposed purchase instrument and all supporting documentation or a list of all due diligence items to be obtained prior to the closing to the Board for its review.
- (5) The Board must authorize all acquisitions of land, title to which will vest in the District, prior to purchase.
- (6) The District shall consider an appraisal acquired by the seller, or any part thereof, in negotiating or approving any purchase, but such appraisal shall not be used in lieu of an appraisal required by this rule to determine the maximum offer allowed by law except as otherwise provided by this rule.

Specific Authority 374.984(3) FS. Law Implemented 374.984(1) — (3) FS. History — New 8-17-99.



county clerk or closing agent. All such documents shall be accompanied by a written signed statement from the acquiring agency indicating that all documents have been approved as to form and legality by the attorney for the District.

Specific Authority 374.984(3) FS. Law Implemented 374.984(1) — (3) FS. History — New 8-17-99.

### **66B-3.013 — Multi-Party Acquisitions.**

(1) The District may enter into an acquisition agreement with a water management district, a local government, a member county, or a navigation related district for any property which has been determined necessary for dredged material management of the Atlantic Intracoastal and Okeechobee Waterways in Florida.

(2) The District and a cooperating agency must execute an acquisition agreement prior to the cooperating agency obtaining title to, or any other legal interest in, the property to be acquired.

(3) An acquisition agreement may provide for the sharing of appraisals, offers, and other negotiation matters, between the District and cooperating agency. However, as a condition of the sharing of such confidential information, the cooperating agency must agree to maintain the confidentiality of appraisals, offers, and other negotiation matters, as required by s. 253.025, F.S., and this rule, and the agency must identify the individuals within the cooperating agency who will have access to confidential information, and obtain the consent of the District prior to disclosing the information to any other person.

Specific Authority 374.984(3) FS. Law Implemented 374.984(1) — (3) FS. History — New 8-17-99.

## **PART II EXCHANGE PROCEDURES**

### **66B-3.014 — Property Exchanges.**

All exchanges of real property owned by the District for other land shall be approved by the Board in the same manner as other acquisitions, and shall be placed in the form of a written exchange agreement reviewed and approved by the Board.

forth in the preceding sentence, the District shall have the ability to conduct its own survey and to consider the results of such survey in determining whether to accept the proposed donation of land.

(2) Appraisal of donated lands and appurtenances shall not be required as a condition of receipt of such land by the District.

(3) Where less than fee simple title is to be donated, or to aid in clearing the title or otherwise resolving a boundary or title question in any acquisition, the District shall accept less than a special warranty deed, provided District legal counsel recommends acceptance of such a conveyance.

Specific Authority 374.984(3) FS. Law Implemented 374.984(1) — (3) FS. History — New 8-17-99.

#### **PART IV CONDEMNATION PROCEDURES**

##### **66B-3.016 — Acquisition Through Condemnation.**

(1) The District will only utilize condemnation for land acquisition when the acquisition by voluntary, negotiated procedures has been unsuccessful.

(2) The District will utilize the procedures contained in Chapter 73 or 74, Florida Statutes, for condemnation. The Board will pass a resolution approving the acquisition of a specific property by condemnation.

Specific Authority 374.984(3) FS. Law Implemented 374.984(4) FS. History — New 8-17-99.

## ENHANCED BIENNIAL REVIEW OF DISTRICT ADMINISTRATIVE RULES FOR 2011

### BACKGROUND

The Legislature enacted Section 5, Chapter 2011-255, Laws of Florida, which created a new Section 120.745, F.S. Section 120.745(2) requires all agencies to perform an "enhanced biennial review" of the agency's existing administrative rules by December 1, 2011. FIND is an "agency" for the purposes of Section 120.745. A report of the entire enhanced biennial review must be published on the District's website by December 1, 2011.

Section 120.745(2) provides that by December 1, 2011, each agency shall complete an enhanced biennial review of the agency's existing rules, which shall include, but is not limited to:

(a) Conduct of the review and submission of the report required by s. 120.74 and an explanation of how the agency has accomplished the requirements of s. 120.74(1). This paragraph extends the October 1 deadline provided in s. 120.74(2) for the year 2011.

(b) Review of each rule to determine whether the rule has been reviewed by OFARR pursuant to the Governor's Executive Order 2011-01.

(c) Review of each rule to determine whether the rule is a revenue rule, to identify the statute or statutes authorizing the collection of any revenue, to identify the fund or account into which revenue collections are deposited, and, for each revenue rule, to determine whether the rule authorizes, imposes, or implements:

1. Registration, license, or inspection fees.
2. Transportation service tolls for road, bridge, rail, air, waterway, or port access.
3. Fees for a specific service or purpose not included in subparagraph 1. or subparagraph 2.
4. Fines, penalties, costs, or attorney fees.
5. Any tax.
6. Any other amounts collected that are not covered under subparagraphs 1.-5.

(d) Review of each rule to determine whether the rule is a data collection rule, providing the following information for each rule determined to be a data collection rule:

1. The statute or statutes authorizing the collection of such data.
2. The purposes for which the agency uses the data and any purpose for which the data is used by others.

3. The policies supporting the reporting and retention of the data.

4. Whether and to what extent the data is exempt from public inspection under chapter 119.

(e) Identification of each entire rule the agency plans to repeal and, if so, the estimated timetable for repeal.

(f) Identification of each entire rule or subpart of a rule the agency plans to amend to substantially reduce the economic impact and the estimated timetable for amendment.

(g) Identification of each rule for which the agency will be required to prepare a compliance economic review, to include each entire rule that:

1. The agency does not plan to repeal on or before December 31, 2012;
2. Was effective on or before November 16, 2010; and
3. Probably will have any of the economic impacts described in s. 120.541(2)(a), for 5 years beginning on July 1, 2011, excluding in such estimation any part or subpart identified for amendment under paragraph (e).

(h) Listing of all rules identified for compliance economic review in paragraph (g), divided into two approximately equal groups, identified as "Group 1" and "Group 2." Such division shall be made at the agency's discretion.

(i) Written certification of the agency head to the committee verifying the completion of the report for all rules of the agency, including each separate part or subsection. The duty to certify completion of the report is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

## STAFF REPORT AND FINDINGS

### ENHANCED BIENNIAL REVIEW OF DISTRICT ADMINISTRATIVE RULES FOR 2011

FIND has three Rule Chapters: Chapter 66B-1 Cooperative Assistance Program, Chapter 66B-2 Waterways Assistance Program and 66B-3 Land Acquisition Procedures. There are 42 individual rules under these three Rule Chapters. In satisfaction of the enhanced biennial review requirement, Staff has reviewed each of the 42 rules and makes the following recommended findings to the Board:

(a) Conduct of the review and submission of the report required by s. 120.74 and an explanation of how the agency has accomplished the requirements of s. 120.74 (1).

FINDING: The report required by s. 120.74 was approved by the Board of Commissioners at its regular meeting on October 28, 2011 and submitted to the President of the Senate, the Speaker of the House of Representatives, and the Joint Administrative Procedures Committee on October 31, 2011.

(b) Review of each rule to determine whether the rule has been reviewed by OFARR pursuant to the Governor's Executive Order 2011-01.

FINDING: No rules have been reviewed by OFARR pursuant to the Governor's Executive Order 2011-01, as the District is not an agency subject to Executive Order 2011-01.

(c) Review of each rule to determine whether the rule is a revenue rule, to identify the statute or statutes authorizing the collection of any revenue, to identify the fund or account into which revenue collections are deposited, and, for each revenue rule, to determine whether the rule authorizes, imposes, or implements:

1. Registration, license, or inspection fees.
2. Transportation service tolls for road, bridge, rail, air, waterway, or port access.
3. Fees for a specific service or purpose not included in subparagraph 1. or subparagraph 2.
4. Fines, penalties, costs, or attorney fees.

5. Any tax.
6. Any other amounts collected that are not covered under subparagraphs 1.-5.

FINDING: None of the District's rules are "revenue rules" as said term is defined in s. 120.745(1)(d).

(d) Review of each rule to determine whether the rule is a data collection rule, providing the following information for each rule determined to be a data collection rule:

1. The statute or statutes authorizing the collection of such data.
2. The purposes for which the agency uses the data and any purpose for which the data is used by others.
3. The policies supporting the reporting and retention of the data.
4. Whether and to what extent the data is exempt from public inspection under chapter 119.

FINDING: None of the District's rules are "data collection rules" as said term is defined in s. 120.745(1)(c).

(e) Identification of each entire rule the agency plans to repeal and, if so, the estimated timetable for repeal.

FINDING: There are no rules that the District plans to repeal.

(f) Identification of each entire rule or subpart of a rule the agency plans to amend to substantially reduce the economic impact and the estimated timetable for amendment.

FINDING: There are no rules that the District plans to amend to substantially reduce the economic impact.

(g) Identification of each rule for which the agency will be required to prepare a compliance economic review, to include each entire rule that:

1. The agency does not plan to repeal on or before December 31, 2012;
2. Was effective on or before November 16, 2010; and

3. Probably will have any of the economic impacts described in s. 120.541(2)(a), for 5 years beginning on July 1, 2011, excluding in such estimation any part or subpart identified for amendment under paragraph (e).

FINDING: There are no rules for which the District will be required to prepare a compliance economic review. There are no rules which will have any of the economic impacts described in s. 120.541(2)(a).

(h) Listing of all rules identified for compliance economic review in paragraph (g), divided into two approximately equal groups, identified as "Group 1" and "Group 2." Such division shall be made at the agency's discretion.

FINDING: Not applicable.

## ALCALDE &amp; FAY

GOVERNMENT &amp; PUBLIC AFFAIRS CONSULTANTS

November 4, 2011

**MEMORANDUM**

**TO:** David Roach, Executive Director  
Mark Crosley, Assistant Executive Director

**FROM:** Jim Davenport

**SUBJECT:** Federal Legislative Update

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Next week, the Senate plans to consider the fiscal year (FY) 2012 House Energy and Water Appropriations Bill (HR 2354) and will likely substitute the Senate Energy and Water Bill on the Senate floor for HR 2354. They are using HR 2354 as a vehicle to move two additional appropriations bills, known as a 'minibus', to speed up consideration of appropriations legislation before the end of the year. The minibus would then be sent back to the House where it would not be approved, leading to conference negotiations between the House and Senate Appropriations Committees on the Energy and Water legislation.

As you know, both the House and Senate FY 2012 Energy and Water Appropriations Bills include funding for channel maintenance and navigation. The Senate bill includes: \$15 million for Inland Navigation Channel Maintenance and \$34 million for Miscellaneous Maintenance. The House bill includes \$123,313,000 for Additional Navigation, and directs the Army Corps of Engineers to allocate these funds based on several criteria (see previous reports).

We will continue working with the House and Senate Energy and Water Appropriations staff to include these funds in the final bill.

**WATER RESOURCES DEVELOPMENT ACT**

The Senate Environment and Public Works (EPW) Committee's new deadline for Water Resource Development Act (WRDA) projects is December 5, 2011. We will continue to work with Senator Nelson's staff to discuss the Atlantic Intracoastal Waterway Commission language.

Please contact us with any questions.