

VOLUME 5

REVIEW OF REGULATORY FRAMEWORK REPORT





CARPENTER CREEK & BAYOU TEXAR
WATERSHED MANAGEMENT PLAN
Regulatory Framework Review

Prepared for

Escambia County

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1.0 INTRODUCTION

A thorough review of applicable regulations related to water quality issues, including nutrient and pathogen control and stormwater runoff, was completed in support of the Watershed Management Plan (WMP) for the Carpenter Creek and Bayou Texar watersheds (herein collectively referred to as Watershed) in Escambia County, Florida. Regulations that govern and impact water quality either directly or indirectly may be found at all levels of government (federal, state, and local). Table 1 identifies the specific rule, rule citation, agency with oversight, and implementing agency applicable within the Watershed.

The following narrative summarizes each rule and describes the resource agency with the regulatory purview and discusses potential opportunities to coordinate efforts or integrate goals or strategies identified within the WMP.

2.0 FEDERAL REGULATIONS

2.1 Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387)

The Federal Water Pollution Control Act, or Clean Water Act (CWA), is the principal federal law governing the pollution of the nation's surface water. The Federal Water Pollution Control Act was enacted in 1948 by the United States Senate and House of Representatives in Congress to restore and maintain the chemical, physical, and biological integrity of the nation's waters. This Act was significantly reorganized and expanded in 1972 and became known as the "Clean Water Act". Congress fine-tuned the amendments in 1977, revised portions of the law in 1981, and enacted further amendments in 1987.

Presently, the CWA contains two major parts, one being the Title II and Title VI provisions which authorize federal financial assistance for municipal sewage treatment plant construction. The other is regulatory requirements, found throughout the act, that apply to industrial and municipal dischargers. This summary will largely focus on the regulatory requirements of the CWA, as these are the most applicable to the water quality issues within the Watershed.

Table 1. Pertinent Regulations Related to Water Quality Issues in the Watershed.

Rule	Statute/Rule/Ordinance	Agency with Oversight	Implementing Agency	Jurisdiction
Federal Water Pollution Control Act (Clean Water Act)	33 U.S.C. §§ 1251-1387	EPA	FDEP	Federal/State
Section 303 of the CWA - Water Quality Standards and Implementation Plans	33 U.S.C. § 1313	EPA	FDEP	Federal/State
Section 305 – States Reports on Water Quality	33 U.S.C. Section 1315	EPA	FDEP	Federal/State
Section 401 – State and Tribal Certification of Water Quality	33 U.S.C. Section 1341	EPA	FDEP	Federal/State
Section 402 – National Pollutant Discharge Elimination System	33 U.S.C. Section 1342	EPA	FDEP	Federal/State
Section 404 – Permits for dredge or fill material (33 USC Section 1344)	33 USC Section 1344	EPA	FDEP/USACE	Federal/State
Coastal Zone Management Act of 1972	16 U.S.C 1451 et. seq.	NOAA	FDEP	Federal/State
Environmental Land and Water Management Act of 1972	Sections 380.012, 380" Fla. Stat. § 380.012	FDEO	FDEO/Escambia County	State/Local
Florida Water Resources Act	Chapter 373, F.S.	NFWWMD	NFWWMD	State

Rule	Statute/Rule/Ordinance	Agency with Oversight	Implementing Agency	Jurisdiction
State Comprehensive Plan	Chapter 187, F.S.	FDEP	FDEP	State
Local Government Comprehensive Planning and Land Development Regulation Act or Growth Management Act of 1985	F.S. §§ 163.3161-.3215 (1995)	FDEO	Escambia County	State/Local
Community Planning Act	HB 487, 2011-139, Laws of Florida	FDEO	Escambia County	State/Local
State Water Resource Implementation Rule	62-40, F.A.C.	FDEP/NWFWMD	FDEP/NWFWMD/Escambia County	State/Local
Air and Water Pollution Control Act as amended	Chapter 403, Florida Statutes	FDEP	FDEP	State
The Florida Pollutant Discharge Prevention and Control Act	Chapter 376, Florida Statutes	FDEP	FDEP	State
Water Quality Assurance Act	376.30–376.317, Florida Statutes	FDEP	FDEP/FDACS/Escambia County	State/Local
Environmental Resource Permitting Program	62-330, F.A.C., Section 373.4131, F.S.	FDEP/NWFWMD	FDEP/NWFWMD	State
Standards for Onsite Sewage Treatment and Disposal Systems	62-6, F.A.C. and 381.0065, F.S.	FDEP	ESCHD	State/Local

Rule	Statute/Rule/Ordinance	Agency with Oversight	Implementing Agency	Jurisdiction
2020 Clean Waterways Act	SB 712, Chapter 2020-150, Laws of Florida	FDEP	FDEP/NWFWMD/ESCHD	State/Local
Florida Coastal Management Program	Chapter 380, F.S	NOAA	FDEP, FDACS, FDEP, FDOH, FDOS, FDOT, FDEM, FFWC, NWFWMD, FDBPR	State
National Pollutant Discharge Elimination System	Chapters 62-620, 62-621, 62-624, F.A.C.	EPA	FDEP	Federal/State
Wastewater Collection System and Transmission Facilities	Chapter 62-604, F.A.C.	FDEP	FDEP	State
Escambia County Comprehensive Plan: 2030	-	Escambia County	Escambia County	Local
Escambia County Zoning Regulations	Ord. No. 2015-12, § 1(Exhibit A), 4-16-2015; LDC Part III, Chapter 3	Escambia County	Escambia County	Local
Escambia County Stormwater Management	Ord. No. 2015-12, § 1(Exh. A), 4-16-2015; LDC Part III, Chapter 5, Article 2, Section 5-2.7; Design Standards Manual (DSM) Chapter 5	Escambia County	Escambia County	Local
Escambia County Wetland Protection	Ord. No. 2015-12, § 1(Exh. A), 4-16-2015; LDC Chapter 4, Article 5, Section 4.5.3; DSM Chapter 2, Wetlands	Escambia County	Escambia County	Local
Escambia County Shoreline Protection	Ord. No. 2015-12, § 1(Exh. A), 4-16-2015; Ord. No. 2018-6, § 1, 2-1-2018; LDC Chapter 4, Article 5, Sec. 4-5.5	Escambia County	Escambia County	Local

Rule	Statute/Rule/Ordinance	Agency with Oversight	Implementing Agency	Jurisdiction
Escambia County Tree Protection	Escambia County DSM Sec. 2-3 & 2-3.1 " Tree Protection & Preservation"; 2-4 " Tree Inventory & Assessment; 2-4.1 "Inventory area"; 2-4.2 "Inventory drawing"; DSM, Chap. 2, Art. 2 landscaping, Sec. 2-3 Tree Protection & Preservation, 2-4.1	Escambia County	Escambia County	Local
Florida Friendly Use of Fertilizer on Urban Landscapes	Ord. No. 2013-50, § 2, 11-21-2013; LDC Chapter 42, Article IX	Escambia County	Escambia County	Local
Storage of hazardous or infectious wastes	LDC Chapter 82, Article IV, Division 1, Sec. 82-139; Code 1985, § 1-29-113	Escambia County	Escambia County	Local
City of Pensacola Future Land Use and Zoning Districts	Code 1986, § 12-2-1; Ord. No. 29-93, § 1, 11-18-1993; Ord. No. 13-06, § 4, 4-27-2006; Ord. No. 28-07, § 1, 6-14-2007	City of Pensacola	City of Pensacola	Local
Bayou Texar Shoreline Protection District	Code 1986, § 12-2-27; Ord. No. 8-99, § 3, 2-11-1999; Ord. No. 12-21, § 1, 6-17-202	City of Pensacola	City of Pensacola	Local
City of Pensacola Stormwater Management and Control of Erosion, Sedimentation, and Runoff	Code 1986, § 12-9; Code of Ordinances, Part II, Title XII, Chapter 12-8	City of Pensacola	City of Pensacola	Local
City of Pensacola Stormwater Utility Fee	Ordinance No. 52- 00	City of Pensacola	City of Pensacola	Local
City of Pensacola Tree Protection Ordinance	Code 1986, § 12-6-6; Ord. No. 31-09, § 1, 9-10-2009; Ord. No. 16-10, § 217, 218, 9-9-2010; Ord. No. 04-21, § 5, 2-25-2021; Ord. No. 14-21, § 1, 7-15-2021	City of Pensacola	City of Pensacola	Local
City of Pensacola Fertilization	Ord. No. 17-20, § 1, 7-16-2020	City of Pensacola	City of Pensacola	Local

2.1.1 Section 303 of the CWA - Water Quality Standards and Implementation Plans (33 U.S.C. § 1313)

This section requires each state to adopt water quality standards¹, evaluate available water quality-related data², and information to develop a list of waters that do not meet state-established water quality standards (impaired) and those that currently meet water quality standards but may be subject to exceed in the next reporting cycle (threatened), establish a priority ranking for such waters taking into account the severity of the pollution and the uses to be made of such waters, and Total Maximum Daily Load (TMDL) development for every pollutant/waterbody combination for those identified as impaired or threatened. An essential component of a TMDL is the calculation of the maximum amount of a pollutant that can occur in the waterbody and still meet water quality standards. Within the TMDL, the state allocates this loading capacity among the various point sources and non-point sources. However, some states, such as Florida, have developed statewide Numeric Nutrient Criteria (NNC) whereby TMDLs are not developed on a site-specific basis. Waterbody water quality data are compared to these NNCs and if they exceed a certain duration/frequency standpoint, then the waterbody is deemed impaired and added to the impaired water list. States are required to update and resubmit their impaired waters list every two years. This process ensures that polluted waters continue to be monitored and assessed until applicable water quality standards are met.

2.1.2 Section 305 of the CWA – States Reports on Water Quality (33 U.S.C. Section 1315)

Section 305 of the CWA requires states to report on the overall condition of aquatic resources. States are allowed to report on all their assessed waterbodies under section 305(b), and those listed as impaired, in a single integrated report.

2.1.3 Section 401 of the CWA – State and Tribal Certification of Water Quality (33 U.S.C. Section 1341)

Section 401 of the CWA provides states and authorized Tribes with the ability to protect the water quality of federally regulated waters within their borders. The Florida Department of Environmental Protection (FDEP) and the Northwest Florida Water Management District (NFWFMD) are the state agencies responsible for certifying compliance with the applicable state water quality standards for federal licenses or permits issued under Section 404 of the Clean Water Act within the Watershed. The state certification process ensures the licenses or permits do not violate Florida’s surface water quality standards system. The components of this water quality standards system include classifications, criteria (including site-specific criteria), an anti-degradation policy, and special protection of certain waters³.

2.1.4 Section 402 of the CWA – National Pollutant Discharge Elimination System (33 U.S.C. Section 1342)

Section 402 of the CWA prohibits the discharge of any pollutant from any point source to navigable waters (“Waters of the United States” or “WOTUS”) unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits regulate direct discharges from “point sources” to WOTUS, including discharges from wastewater treatment plants and stormwater runoff from a variety of sources.

In 1995, FDEP received authorization from the U.S. Environmental Protection Agency (EPA) to administer the NPDES wastewater program in Florida. Since that time, federal NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated

¹ Chapter 62-307.00, F.A.C., Special Protection, Outstanding Florida Waters, Outstanding National Resource Waters.

² Chapter 62-307.00, F.A.C., Special Protection, Outstanding Florida Waters, Outstanding National Resource Waters.

³ Chapter 62-307.00, F.A.C., Special Protection, Outstanding Florida Waters, Outstanding National Resource Waters.

into a state-issued permit, thus giving the permittee one set of permitting requirements rather than separate requirements for state and federal. The NPDES permit requires compliance with both Technology-Based Effluent Limitations (TBELs) as well as Water Quality-based Effluent Limitations (WQBELs).

In October 2000, EPA authorized FDEP to implement the NPDES stormwater permitting program in the state of Florida (except for Indian Country lands). FDEP's authority to administer the NPDES program is set forth in Section 403.0885, Florida Statutes (F.S.). The NPDES stormwater program regulates point source discharges of stormwater into surface waters of the state of Florida from certain municipal, industrial and construction activities. As the NPDES stormwater permitting authority, FDEP is responsible for promulgating rules and issuing permits, managing and reviewing permit applications, and performing compliance and enforcement activities.

The NPDES Stormwater Program regulates point source discharges from three potential sources: Municipal Separate Storm Sewer Systems (MS4s), construction activities, and industrial activities. The NPDES Stormwater Program in Tallahassee is responsible for the development, administration, and compliance of rules and policy to minimize and prevent pollutants in stormwater discharges throughout the state of Florida. Operators of these sources may be required to obtain an NPDES permit before they can discharge stormwater.

2.1.5 Section 404 of the CWA – Permits for dredge or fill material (33 USC Section 1344)

Section 404 of the CWA establishes a permitting program for discharges of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States unless specifically exempted. Proposed activities are regulated through a permit review process administered by the EPA through either the U.S. Army Corps of Engineers (Corps) or an approved State Program which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines.

In 2018, Florida's legislature passed a bill⁴ that gave FDEP authority to begin the public rulemaking process to better protect the state's wetlands and surface waters by assuming the federal dredge and fill permitting program under section 404 of the CWA within certain waters. The rulemaking process was completed on July 21, 2020. Through this process, Chapter 62-331, Florida Administrative Code (F.A.C.), "State 404 Program," was created to bring in the requirements of federal law not already addressed by the existing Environmental Resource Permitting (ERP) program. Minor changes were also made to the ERP rules in Chapter 62-330, F.A.C., to facilitate assumption. Florida submitted its assumption package to the EPA on August 20, 2020. The EPA signed an agreement to delegate to the FDEP the authority to issue wetland permits in the state under Section 404 of the federal Clean Water Act, effective on December 22, 2020.

The State's assumption of the 404 program, delegated authority to FDEP to regulate state "assumed" waters. The Corps still maintains Section 404 authority over certain waters, referred to as "retained" waters. The "retained" waters include those waters that 1) are specifically listed in the Corps' Navigable Waters List, 2) waters subject to the ebb and flow of the tide, and 3) wetlands adjacent thereto landward to a 300-foot administrative boundary as well as "Indian Country," as defined by the Memorandum of Agreement between FDEP and the Corps.

Both the federal and state 404 program are responsible for overseeing permitting for any project proposing dredge or fill activities within WOTUS. Such projects include, but are not limited to, single-family residences;

4 House Bill 7043 (2018)

commercial developments; utility projects; environmental restoration and enhancement; linear transportation projects; governmental development; certain agricultural and silvicultural activities; and in-water work within assumed freshwater bodies such as boat ramps, living shorelines, and other shoreline stabilization.

Both the federal and state 404 programs follow the Clean Water Act Section 404(b)(1) Guidelines (Guidelines) when evaluating applications for dredge and fill activities. The Guidelines establish substantive environmental criteria which must be met before activities are authorized. These criteria include avoidance, minimization, and compensatory mitigation.

Avoidance means mitigating an aquatic resource impact by selecting the least damaging project type, spatial location, and extent compatible with achieving the purpose of the project. Avoidance is achieved through an analysis of appropriate and practicable alternatives and consideration of impact footprint.

Minimization means mitigating an aquatic resource impact by managing the severity of a project's impact on resources at the selected site. Minimization is achieved through the incorporation of appropriate and practicable design and risk avoidance measures.

Compensatory Mitigation means mitigating an aquatic resource impact by replacing or providing substitute aquatic resources for impacts that remain after avoidance and minimization measures have been applied and are achieved through appropriate and practicable restoration, establishment, enhancement, and/or preservation of aquatic resource functions and services.

The Corps of Engineers has issued a State Programmatic General Permit (SPGP) that enables either the NFWFMD or FDEP to authorize certain activities via federal dredge and fill permit under Section 404 of the CWA and Section 10 of the Rivers and Harbor Act of 1899, eliminating the need for a separate permit from the Corps. Activities covered by the SPGP program include:

1. Construction or restoration of certain seawalls or riprap;
2. Construction of certain boat ramps and boat launch areas;
3. Construction of certain docks, piers, associated facilities, and other minor piling-supported structures; and
4. Maintenance dredging of canals and channels, including organic detrital removal from freshwater lakes and rivers.

Aside from routine activities that may be granted coverage under a streamlined permit (i.e., Nationwide or general permit), most activities seeking authorization either under the federal or state 404 program are placed on public notice, which is designed to solicit comments from the public, federal, state and local agencies, and officials.

2.2 Coastal Zone Management Act of 1972 (16 U.S.C 1451 et. Seq.)

The U.S. Congress recognized the importance of meeting the challenge of continued growth in the coastal zone by passing the Coastal Zone Management Act (CZMA) in 1972. The CZMA outlines three national programs, the National Coastal Zone Management Program, the National Estuarine Research Reserve System, and the Coastal and Estuarine Land Conservation Program (CELCP).

The National Coastal Zone Management Program comprehensively addresses the nation's coastal issues through a voluntary partnership between the federal government and coastal and Great Lakes states and territories. Currently, 34 coastal states participate, including Florida.

The Florida Coastal Management Program was approved by the National Oceanic and Atmospheric Administration (NOAA) in 1981, with the FDEP serving as the lead agency. A network of nine state agencies

and five water management districts together enforces 24 separate statutes. The Florida coastal zone encompasses the entire state but is divided into two tiers. Only coastal cities and counties that include or are contiguous to state water bodies are eligible to receive coastal management funds.

National Estuarine Research Reserve is a network of 30 coastal sites designated as reserved to protect and study estuarine systems. Established through the CZMA, the reserves represent a partnership program between NOAA and the coastal states. NOAA provides funding and national guidance, and each reserve is managed daily by a lead state agency or university with input from local partners. There are no reserve sites located within the Watershed.

The CELCP provides state and local governments with matching funds to purchase significant coastal and estuarine lands, or conservation easements on such lands, from willing sellers. Lands or conservation easements acquired with CELCP funds are protected in perpetuity so that they may be enjoyed by future generations.

NOAA administers a competitive process each year in which funding was available beginning in 2006. Participating coastal states and territories nominated projects that advanced the priorities identified in their coastal land conservation plan. No CELCP sites are located within the Watershed.

3.0 STATE REGULATIONS

3.1 Environmental Land and Water Management Act of 1972 (Chapter 380 Land and Water Management; Part I; ss. 380.012-380.12)

This Act establishes land and water management policies to guide and coordinate local decisions relating to growth and development. The Act established two land use programs:

1. The Areas of Critical State Concern Program protects areas of critical state concern through state designation, and
2. The Developments of Regional Impact (DRI)⁵Program provided a process to identify regional impacts from large developments and required appropriate development order provisions to mitigate these impacts.

The rules governing developments of regional impact were set forth in Rule 73C-40, Florida Administrative Code.

The Florida Department of Economic Opportunity (FDEO – aka Florida Department of Community Affairs) reviewed developments of regional impact to ensure compliance with state law and to identify the regional and state impacts of large-scale developments. FDEO also made recommendations to local governments suggesting mitigation conditions and/or approving/not approving proposed developments. The developer or FDEO was authorized to appeal local government development orders to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.

In 2018, Florida enacted statutory changes⁶ eliminating developments from review through the DRI Program. As revised, a development that is below 100 percent of the numerical thresholds in the statewide guidelines as set forth in Section 380.0651, Florida Statutes, is not subject to DRI review; a

⁵ Pursuant to Section 380.06(1), Florida Statutes, a development of regional impact is defined as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county"

⁶ House Bill 1151

development that is at or above 100 percent is subject to review. There are two exemptions (§380.06(12)(b)1. And 2., Fla. Statutes):

1. Amendments to a development order governing an existing development of regional impact.
2. An application for development approval filed with a concurrent plan amendment application pending as of May 14, 2015, if the applicant elects to have the application reviewed pursuant to this section as it existed on that date. The election shall be in writing and filed with the affected local government, regional planning council, and state land planning agency before December 31, 2018.

The changes to Section 380.06, Florida Statutes, removed the FDEP and the regional planning councils from the DRI review and allows local governments the ability to change, amend, and even rescind DRIs through the same process they use for any other development within their borders.

3.2 Florida Water Resources Act (Chapter 373, F.S.)

The Florida Water Resources Act, Chapter 373, F.S., establishes that all water in Florida, on the surface or the ground, is a public resource. This act also created Florida's water management districts based on hydrological boundaries. The management districts were granted broad powers, overseeing water quality, water allocation, flood control, and ecosystems. In addition, the districts were charged with issuing permits to potential water users. To further consolidate basin-level management, Florida water law required that water management districts support and assist counties, municipalities, and local governments in their water resources management efforts.

3.3 State Comprehensive Plan (Chapter 187)

The State Comprehensive Plan provides long-range policy guidance for the orderly social, economic, and physical growth of the state. It is reviewed biennially by the Legislature, and implementation of its policies shall require legislative action unless otherwise specifically authorized by the constitution or law.

The State Comprehensive Plan is intended to be a direction-setting document. Its policies may be implemented only to the extent that financial resources are provided pursuant to legislative appropriation or grants or appropriations of any other public or private entities. The plan does not create regulatory authority or authorize the adoption of agency rules, criteria, or standards not otherwise authorized by law.

The goals and policies contained in the State Comprehensive Plan shall be reasonably applied where they are economically and environmentally feasible, not contrary to the public interest, and consistent with the protection of private property rights. The plan shall be construed and applied as a whole, and no specific goal or policy in the plan shall be construed or applied in isolation from the other goals and policies in the plan.

The plan is broad but does contain policies directed toward the water, coastal and marine, natural systems, and recreational values. State Comprehensive Plan policies applicable to the implementation goals of the Watershed Management Plan include, but are not limited to:

- a. Identify and protect the functions of water recharge areas and provide incentives for their conservation.
- b. Establish minimum seasonal flows and levels for surface watercourses with primary consideration given to the protection of natural resources, especially marine, estuarine, and aquatic ecosystems.
- c. Discourage the channelization, diversion, or damming of natural riverine systems.
- d. Encourage the development of a strict floodplain management program by state and local governments designed to preserve hydrologically significant wetlands and other natural floodplain features.

- e. Protect aquifers from depletion and contamination through appropriate regulatory programs and incentives.
- f. Protect surface and groundwater quality and quantity in the state.
- g. Promote water conservation as an integral part of water management programs as well as the use and reuse of water of the lowest acceptable quality for the purposes intended.
- h. Eliminate the discharge of inadequately treated wastewater and stormwater runoff into the waters of the state.
- i. Identify and develop alternative methods of wastewater treatment, disposal, and reuse of wastewater to reduce the degradation of water resources.
- j. Accelerate public acquisition of coastal and beachfront land where necessary to protect coastal and marine resources or to meet projected public demand.
- k. Protect coastal resources, marine resources, and dune systems from the adverse effects of development.
- l. Develop and implement a comprehensive system of coordinated planning, management, and land acquisition to ensure the integrity and continued attractive image of coastal areas.
- m. Encourage land and water uses that are compatible with the protection of sensitive coastal resources.
- n. Protect and restore long-term productivity of marine fisheries habitat and other aquatic resources.
- o. Avoid the exploration and development of mineral resources which threaten marine, aquatic, and estuarine resources.
- p. Conserve forests, wetlands, fish, marine life, and wildlife to maintain their environmental, economic, aesthetic, and recreational values.
- q. Acquire, retain, manage, and inventory public lands to provide recreation, conservation, and related public benefits.
- r. Prohibit the destruction of endangered species and protect their habitats.
- s. Establish an integrated regulatory program to assure the survival of endangered and threatened species within the state.
- t. Encourage multiple uses of forest resources, where appropriate, to provide for timber production, recreation, wildlife habitat, watershed protection, erosion control, and maintenance of water quality.
- u. Protect and restore the ecological functions of wetland systems to ensure their long-term environmental, economic, and recreational value.
- v. Develop and implement comprehensive planning, management, and acquisition program to ensure the integrity of Florida's river systems.
- w. Emphasize the acquisition and maintenance of ecologically intact systems in all land and water planning, management, and regulation.
- x. Expand state and local efforts to provide recreational opportunities to urban areas, including the development of activity-based parks.
- y. Protect and expand park systems throughout the state.
- z. Encourage the use of public and private financial and other resources for the development of recreational opportunities at the state and local levels.

3.4 Local Government Comprehensive Planning and Land Development Regulation Act or Growth Management Act of 1985 [F.S. §§ 163.3161-.3215 (1995)]

This act required that each county and municipal government adopt a local comprehensive plan consistent with regional and state plans; established a process for the state to approve local plans and amendments; required plan content including future land use maps, capital improvement elements, and others; created formal state administrative hearings for challenges and sanctions for noncompliance; enhanced citizen standing to file challenges, and limited the number of most plan amendments to twice a year.

3.5 Community Planning Act (HB 487, 2011-139, Laws of Florida)

The Community Planning Act provides counties and municipalities the power to plan for future development by the adoption of comprehensive plans. Each county and municipality must maintain a comprehensive plan. Comprehensive plans are intended to provide for orderly and balanced future economic, social, physical, environmental, and fiscal development in a county or municipality.

One of the three types of comprehensive plan amendments is the small-scale development amendment. A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 10 acres of land (or less than 20 acres in a rural area of opportunity), does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, and does not require substantive changes to the text of the plan. Small-scale amendments may be approved with a single hearing before the local government's governing body and do not require review by the Department of Economic Opportunity.

The act increases the maximum acreage of a small-scale comprehensive plan amendment from 10 acres to 50 acres and increases the maximum acreage for a small-scale comprehensive plan amendment within a rural area of opportunity from 20 acres to 100 acres.

The act also provides that any landowner with a development order existing before the incorporation of a municipality may elect to abandon the development order and develop the vested density and intensity contained therein pursuant to the municipality's comprehensive plan and land development regulations so long as the vested uses, density, and intensity are consistent with the municipality's comprehensive plan, and all existing concurrency obligations in the development order remain valid.

Finally, the act amends the Florida Interlocal Cooperation Act of 1969 to allow an entity established pursuant to an interlocal agreement to acquire title to any water or wastewater plant utility facilities, other facilities, or property acquired using eminent domain if ten or more years have passed since the date of acquisition by eminent domain.

3.6 Florida Watershed Restoration Act (Section 403.067, F.S.)

The Florida Watershed Restoration Act (FWRA) was enacted in 1999 to protect Florida's waters and to apply and extend federal requirements related to the TMDL program and the CWA to the state of Florida. This act establishes the TMDL process for the state of Florida. The act identifies FDEP as the lead agency in administering the TMDL program and requires FDEP to coordinate the development of TMDLs with a variety of stakeholders including but not limited to local governments, water management districts, the Department of Agriculture and Consumer Services, local soil and water conservation districts, environmental groups, regulated interests, other appropriate state agencies.

3.7 State Water Resource Implementation Rule (Sec. 373.036, F.S; 62-40, F.A.C.)

This rule is intended to provide water resource implementation goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, all of which are based on statutory policies and directives in Chapters 187, 373, and 403, F.S. This rule requires local governments

to consider the water resource implementation rule in the development of their comprehensive plans as required by Chapter 163, F.S., and as required by Section 403.0891(3)(a), F.S. Additionally, this requires the districts which manage state water resources to consider the water resource implementation rule in the development of their respective plans and programs.

This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of FDEP, the water management districts, and local governments. The rule provides that one of the primary goals of the program is to maintain, to the degree possible, during and after construction and development, the predevelopment stormwater characteristics of a site. The rule also provides a specific minimum performance standard for stormwater treatment systems: to remove 80% of the post-development average annual stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards". This performance standard is significantly different than the original one used in Florida's stormwater treatment rules.⁷ The rule addresses additional source controls, BMPs, and other protective measures and the water quality mitigation and monitoring treatment efficiency of BMPs in series (treatment train).

3.8 Air and Water Pollution Control Act as amended (Chapter 403, Florida Statutes)

Chapter 403, Florida Statutes, declares that pollution of the waters of the state constitutes a menace to the public health, safety, and welfare and that it is a policy of the state to protect, maintain, and improve their quality. Section 403.061, Florida Statutes, grants the FDEP the power to control and prohibit pollution. Section 403.061(8), Florida Statutes, authorizes the FDEP to issue orders as are necessary to control air and water pollution and to enforce the same in administrative and judicial proceedings. Section 403.121, Florida Statutes, authorizes the Department to institute administrative proceedings to order the prevention, abatement, or control of violations of Chapter 403, Florida Statutes, and to order appropriate corrective actions.

3.9 The Florida Pollutant Discharge Prevention and Control Act (Chapter 376, Florida Statutes)

The Florida Pollutant Discharge Prevention and Control Act (FPDPCA) was passed in 1970 primarily to prevent vessels from discharging oil or other pollutants while in waters within the territorial jurisdiction of Florida. This act provides police power of the state by conferring upon the FDEP the power to:

- a. Deal with the hazards and threats of danger and damage posed by such transfers and related activities,
- b. Require the prompt containment and removal of pollution occasioned thereby; and
- c. Establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

3.10 Water Quality Assurance Act (Chapter 376.30–376.317, Florida Statutes)

Enacted in 1983 this legislation was designed to support and complement the federal Clean Water Act. This act allows FDEP to exercise the police power of the state by conferring the power to:

- a. Deal with the environmental and health hazards and threats of danger and damage posed by such storage, transportation, disposal of pollutants, dry cleaning solvents, and hazardous substances within the jurisdiction of the state and state waters,
- b. Require the prompt containment and removal of products occasioned thereby; and

⁷ Chapter 62- 25, F.A.C

- c. Establish a program that will enable the department to:
- 1) Provide for expeditious restoration or replacement of potable water systems or potable private wells of affected persons where health hazards exist due to contamination from pollutants (which may include the provision of bottled water on a temporary basis, after which a more stable and convenient source of potable water shall be provided).
 - 2) Provide for the inspection and supervision of facilities that store, transport, and dispose of pollutants, dry-cleaning solvents, and hazardous substances.
 - 3) Guarantee the prompt payment of reasonable costs resulting therefrom, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other services to the department in the investigation of drinking water contamination complaints.

The focus of this act is primarily related to groundwater protection and hazardous waste contamination. The components related to groundwater protection include:

- **Monitoring and Data Collection** – required FDEP to collect and compile all scientific and factual information relating to water resources generated by municipalities, water management districts, and state agencies. The act also required FDEP to establish its groundwater quality monitoring network with other cooperating state and federal agencies, water management districts, and municipalities.
- **Potable Water and Well Programs** – requires FDEP to protect public health from dangers associated with public or private water supplies.
- **Septic Tanks** – Provided new siting requirements for on-site sewer treatment and disposal facilities and criteria and procedures for obtaining hardship variances.
- **Pollution Spill Prevention and Control** – Gives FDEP the authority to promulgate rules pertaining to the permitting, construction, installation, and maintenance of storage tanks with capacity in excess of 550 gallons of certain specified pollutants. This act also creates a trust fund that provides funding to clean up contaminated areas.
- **Pesticides** – Gives Florida Department of Agriculture and Consumer Services (FDACS) primary responsibility for the review and regulation of pesticides.

Hazardous waste management components include:

- **Local and Regional Involvement** – calls for local governments to become more involved in hazardous waste management. Requires waste management assessments to be prepared by every county in the state in cooperation with regional planning councils. This portion of the act is responsible for the “Amnesty Day” that allows small quantities of hazardous waste to be collected free of charge.
- **Hazardous Waste Siting** – requires FDEP to coordinate siting of the hazardous waste facility with local government to ensure compliance with local land use ordinances, local zoning ordinances, consistency with the local comprehensive plan, or any other local regulation in effect.
- **Liability** – established penalties and liabilities for violators.
- **Transportation** – requires transporters of hazardous waste to be bonded or insured to provide assurances that any liability incurred in the transportation of hazardous waste could be accommodated.
- **Permitting** – provides statutory procedures that FDEP must follow when licensing a facility.
- **Governmental Waste** – establishes procedures for the management of hazardous substances by governmental agencies.

- **Emergencies** – identifies FDEP as the lead agency for interdepartmental coordination related to water pollution, toxic substances, hazardous waste, and other environmental and health emergencies.

3.11 Environmental Resource Permitting Program (62-330, F.A.C., Section 373.4131, F.S.)

The Environmental Resource Permit (ERP) program is authorized under Part IV of Chapter 373 F.S. More specifically, Section 373.4131, F.S., authorizes the implementation of the statewide ERP rules. Chapter 120, F.S. (Administrative Procedures Act) also governs licensing, rulemaking, and administrative procedures under the ERP program. Chapter 403, F.S. (Environmental Control) governs aspects of the ERP program related to water quality, program implementation, exemptions, and general permits.

Chapter 62-330, F.A.C., establishes the types of activities that require a permit, activities that do not require a permit, the procedures for processing a permit, the conditions for issuance of a permit, general permit conditions, and the forms associated with applications, notices, and permits. It also provides for general permits, which are pre-issued for specified activities that have been determined by rule to have minimal individual and cumulative impact.

The following additional rules of the Florida Administrative Code are related to implementing Chapter 62-330, F.A.C. This is not a comprehensive list and identifies those rules which may be applicable to the Watershed and affect surface water quality.

- Chapters 28-103 through 28-108, F.A.C. (Uniform Rules of Procedure) — provide uniform rules of procedure for all state agencies regarding activities such as processing of variances, administrative hearings, mediation, and licensing. Many of these uniform procedures have been superseded by exceptions to the uniform rules of procedure in Chapter 62-110, F.A.C. (specific to FDEP), and in the rules of the applicable water management districts.
- Chapter 62-4, F.A.C. (Permits) — Rule 62-4.242, F.A.C., provides antidegradation requirements for activities located in Outstanding Florida Waters. Rule 62-4.244, F.A.C., provides criteria for mixing zones. Subsection 62-4.050(4)(h), F.A.C., provides the schedule of processing fees required for applications, notices, and petitions for ERP activities that are the responsibility of FDEP and the NFWFMD.
- Chapter 62-25, F.A.C. (Regulation of Stormwater Discharge) — applies to stormwater treatment systems that qualify for grandfathering under Sections 373.414(11), (12), (13), (14), (15), (16), or 373.4145(6), F.S. Systems constructed under Chapter 62-25, F.A.C. are authorized to be operated in perpetuity, and maintenance may be conducted under such systems without a permit under Chapter 62-330, F.A.C., in perpetuity, provided the terms and conditions of the permit, exemption, or other authorization under Chapter 62-25, F.A.C., continue to be met, and provided the work is conducted in a manner that does not cause violations of water quality standards. However, if the system is altered, modified, expanded, abandoned, or removed, it is subject to being regulated by Chapter 62-330, F.A.C.
- Chapter 62-40, F.A.C. (Water Resource Implementation Rule) — provides water resource implementation goals, objectives, and guidance relating to water resources. This includes guiding principles for stormwater and surface water management programs (including the basis for minimum design criteria for the stormwater management systems), flood protection, natural systems protection and management, minimum flows and levels, and protection measures for surface water resources (including the goals for implementation of erosion and sediment control measures).
- Chapter 62-302, F.A.C. (Surface Water Quality Standards) — provides the state’s numeric and narrative water quality standards criteria for surface waters, lists the classes of waters in Florida, and

lists waters that are designated as Outstanding Florida Waters. Also includes the state's anti-degradation requirements.

- Chapters 62-303 (Identification of Impaired Surface Waters), 62-304, (Total Maximum Daily Loads), and 62-306, F.A.C. (Water Quality Credit Trading) — provide for the identification of waters that do not meet state water quality standards and that are subject to pollution limits and recovery plans. Discharges of pollutants that cause or contribute to such impairment are subject to meeting net improvement requirements.
- Chapter 62-340, F.A.C. (Delineation of the Landward Extent of Wetlands and Surface Waters) — provides the procedures and methodology used by all state and local government agencies in Florida to delineate the landward extent of wetlands and other surface waters.
- Chapter 62-342, F.A.C. (Mitigation Banks) – applies to projects proposed to be constructed and operated as a mitigation bank, and to persons seeking to purchase mitigation credits from such banks. The criteria of this chapter apply in addition to the permitting requirements of Chapter 62-330, F.A.C.
- Chapter 62-345, F.A.C. (Uniform Mitigation Assessment Method) — in accordance with Section 373.414(18), F.S., this is the sole methodology to be used to determine the amount of mitigation required to offset otherwise un-permittable adverse impacts to wetlands and other surface waters, and the amount of mitigation that is provided by proposed mitigation. This rule does not assess whether the adverse impacts meet other criteria for issuance of a permit, or whether the mitigation is appropriate to offset adverse impacts.
- Chapter 62-346, F.A.C. (Environmental Resource Permitting in Northwest Florida) – applicable to activities within the geographical area of the NFWFMD that were permitted, constructed, exempt from permitting, legally in existence, or subject to an application under that chapter that was complete, including activities that qualified for a noticed general permit under Chapter 62-341, F.A.C., prior to the effective date of the rules adopted under Section 373.4131, F.S.
- Chapter 62-621, F.A.C (Generic Permits) – sets forth procedures to obtain a type of general NPDES permit issued under Section 403.0885, F.S., and 40 CFR 122.28, and a type of “Non-NPDES Generic Permit” issued under Section 403.087, F.S. These are alternatives to individual permits for certain wastewater facilities and other activities that: involve the same or substantially similar types of operations; discharge the same types of wastes or engage in the same types of residuals or industrial sludge use or disposal practices; require the same effluent limitations, operating conditions, or standards for residuals or industrial sludge use or disposal; require the same or similar monitoring.

The ERP Program regulates activities involving the alteration of surface water flows. This includes new activities in uplands that generate stormwater runoff from upland construction, as well as dredging and filling in wetlands and other surface waters. Within the Watershed, ERP applications are processed by the NFWFMD and FDEP. Operating agreements between the FDEP and the water management districts specify which agency will process each type of application⁸.

An Operating Agreement was executed between the Corps, FDEP, and the water management districts on September 4, 2012⁹. This agreement coordinates the exchange of information between these agencies regarding permitting, compliance, and enforcement of activities regulated under Part IV of Chapter 373,

⁸ Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between Northwest Florida Water Management District and Department of Environmental Protection, Chapter 62-113, F.A.C. accessible at: http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm

⁹ http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm

F.S., that also require a Department of the Army (DA) permit under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, or Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972. This agreement provides:

- a. Protocols for coordination of applications and information between the districts, FDEP, and the Corps.
- b. Discussion of how the issuance of an ERP permit or verification of exemption constitutes a water quality certification or waiver under the CWA for any required Corps permit.

Discussion of how the issuance of an ERP permit constitutes a finding of consistency or waiver of the state's statutory authority under Florida's federally approved coastal zone management program. Activities that are exempt from the state ERP program are not eligible to be reviewed for federal consistency with Part IV of Chapter 373, F.S.

Stated briefly, an ERP permit is required for the construction, alteration, operation, maintenance, removal, or abandonment of any new project, which is a nonexempt activity that is 1) in, on, or over wetlands or other surface waters; 2) more than 4,000 square feet of an impervious and semi-impervious surface area subject to vehicular traffic; 3) more than 9,000 square feet of impervious and semi-impervious surface area; 4) a project area of more than one acre; 5) impounds more than 40 acre-feet of water, or 6) part of a larger common plan of development¹⁰. The types of permits available under the statewide ERP rule are general, individual, and conceptual permits¹¹.

General permits authorize certain activities, which have been determined to cause minimal individual and cumulative adverse impacts to water resources if conducted in accordance with specific requirements (62-330.052, F.A.C.). Conceptual permits are a mechanism that allows applicants to have a development plan conceptually approved pending final design and the ability to meet ERP rules. Conceptual permits do provide a means for authorization to conduct the actual work but merely vet the concept design and provide a foundation for the applicant to move forward with final design plans.

Individual permits are required for those activities that do not qualify for either an exemption or general permit. Individual permits require an applicant to provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of a project will meet the Conditions for Issuance in Rule 62-330.301, F.A.C., the applicable Additional Conditions for Issuance in Rule 62-330.302, F.A.C., and the requirements of Volume I and II of the applicant's handbook. To receive authorization under an individual ERP permit, the following conditions for issuance must be met:

- Regulated activities will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters [paragraph 62-330.301(1)(d), F.A.C.];
- A regulated activity located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, the regulated activity will be clearly in the public interest [subsection 62-330.302(1), F.A.C.];
- A regulated activity will not adversely affect the quality of receiving waters such that the water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including any anti-degradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3), and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding

¹⁰ Additional threshold requirements are set forth in F.A.C. R. 62-330.020, Applicant's Handbook Vol. I, §3.1.4 and Applicant's Handbook Vol. II, are both incorporated by reference in F.A.C. R. 62-330.010.

¹¹ F.A.C. R. 62-330.020(3).

National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated [paragraph 62-330.301(1)l, F.A.C.];

- A regulated activity located in, adjacent to, or in close proximity to Class II waters or located in waters classified by the Department of Agriculture and Consumer Services as approved, restricted, conditionally approved, or conditionally restricted for shellfish harvesting will comply with the additional criteria in section 10.2.5 of the Applicant's Handbook [paragraph 62-330.302(1)(c), F.A.C.];
- The construction of vertical seawalls in estuaries and lagoons will comply with the additional criteria in section 10.2.6 of the Applicant's handbook [paragraph 62-330.302(1)(d), F.A.C.];
- A regulated activity will not cause adverse secondary impacts to the water resources [paragraph 62-330.301(1)(f), F.A.C.]; and
- A regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters [paragraph 62-330.302(1)(b), F.A.C.].

The condition for issuance is based on several environmental criteria enumerated in Volume I of the applicant's handbook. Environmental criteria include:

- Elimination or Reduction of Impacts (10.2.1). Protection of wetlands and other surface waters is preferred to destruction and mitigation due to the temporal loss of ecological value and uncertainty regarding the ability to recreate certain functions associated with these features. The following factors are considered in determining whether an application will be approved by the Florida Department of Environmental Protection and/or Northwest Florida Water Management District: the degree of impact to the wetland and other surface water functions caused by a proposed activity; whether the impact to these functions can be mitigated; and the practicability of design modifications for the site that could eliminate or reduce impacts to these functions, including alignment alternatives for a proposed linear system.
- Fish, Wildlife, Listed Species and their Habitats (10.2.2 and 10.2.3.2). An applicant must provide reasonable assurances that a regulated activity will not impact the values of wetland and other surface water functions so as to cause adverse impacts to:
 - The abundance and diversity of fish, wildlife, listed species, and the bald eagle (*Haliaeetus leucocephalus*), which is protected under the Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d (April 30, 2004); and
 - The habitat of fish, wildlife, and listed species
- Public Health, Safety, or Welfare or the Property of Others (Section 10.2.3). The criterion regarding public health, safety, welfare, and the property of others include:
 - Environmental hazards (i.e. mosquito control; proper disposal of solid, hazardous, domestic, or industrial waste; aids to navigation; hurricane preparedness or cleanup; environmental remediation, enhancement, or restoration; and similar environmentally related issues).
 - Impacts on shellfish harvesting
 - Flooding or alleviating existing flooding on the property of others
 - Environmental impacts on the property of others
- Navigation, Water Flow, Erosion, and Shoaling (Section 10.2.3.3). Applicant must demonstrate that the activity will not:
 - Significantly impede navigability or enhance navigability
 - Cause or alleviate harmful erosion or shoaling
 - Significantly impact or enhance water flow

- Fisheries, Recreational, Marine Productivity (Section 10.2.3.4). Florida Department of Environmental Protection and/or Northwest Florida Water Management District will evaluate whether the regulated activity in, on or over wetlands or other surface waters will cause:
 - Adverse impacts on sport or commercial fisheries or marine productivity
 - Adverse impacts or improvements to existing recreational uses of a wetland or other surface water
- Historical and Archeological Resources (Section 10.2.3.4). Florida Department of Environmental Protection and/or Northwest Florida Water Management District will evaluate whether the regulated activity in, on or over wetlands or other surface waters will cause a significant impact on historical or archaeological resources.
- Current Condition and Relative Value of Function (Section 10.2.3.7). The Florida Department of Environmental Protection and/or Northwest Florida Water Management District will consider the current condition and relative value of the functions performed by wetlands and other surface waters affected by the proposed regulated activity
- Water Quality (Section 10.2.4 of the Applicant’s Handbook). An applicant must provide reasonable assurance that the regulated activity will not cause or contribute to violations of water quality standards in areas where water quality standards apply. Reasonable assurances regarding water quality must be provided both for the short term and the long term, addressing the proposed construction, alteration, operation, maintenance, removal, and abandonment of the project.

The three main criteria the ERP rule provides to protect the water resources of the Watershed are:

1. Water quality criteria to ensure compliance with state water quality standards.
2. Water quantity criteria to prevent adverse flooding and maintain drainage.
3. Environmental criteria for the protection of wetlands and other surface waters, and the preservation and protection of habitats for fish and wildlife.

As it relates to water quality within the Watershed a significant component of the ERP program involves the design of a stormwater management system for those projects requiring an ERP permit. Stormwater management system design and performance standards are provided in Volume II of the two-volume “Environmental Resource Permit Applicant’s Handbook”. Unlike Volume I, Volume IIs are specific to each water management district as there are regional conditions that affect stormwater design and performance standards. Volume IIs also are incorporated by reference in paragraphs 62-330.010(4)(b)2. Through 5., F.A.C., and therefore operate as rules of FDEP and each applicable water management district within the geographical area of that district for activities regulated under Chapter 62-330, F.A.C.

Florida’s stormwater quality regulations are “technology-based” not “water quality effluent-based” and rely on four key components:

1. A performance standard or goal for the minimum level of treatment.
2. Design criteria for best management practices (BMPs) that will achieve the performance standard.
3. A rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will not cause harm to water resources and will comply with state water quality standards.
4. Periodic review and updating of BMP design criteria as more information becomes available to increase their effectiveness in removing pollutants.

A key aspect of the ERP stormwater requirements includes the treatment volume and recovery time. For treatment volume, the rule requires the first flush of runoff to be routed to a retention basin and percolated

into the ground. For systems that discharge to Class III receiving water bodies, the applicant shall provide retention for one of the following:

- Off-line retention of the first one-half inch of runoff from the contributing area; or
- On-line retention of the runoff from one inch of rainfall over the contributing area. A minimum volume of one-half inch of runoff from the contributing area is required.

For direct discharges to Outstanding Florida Waters (OFWs), the applicant shall provide retention for an additional fifty percent of the applicable treatment volume specified above.

For recovery time the stormwater management system must provide the capacity for the appropriate treatment volume within 72 hours following a storm event assuming average antecedent moisture conditions.

3.12 Standards for Onsite Sewage Treatment and Disposal Systems (62-6, F.A.C. and 381.0065, F.S.)

Provides guidelines for regulating onsite sewage treatment and disposal systems (OSTDS) including design criteria, environmental protection, and permitting. Original authority was provided to the Florida Department of Health, but this authority was transferred to FDEP via the 2020 Clean Waterways Act (See below). 381.0065, F.S., allows FDEP to issue a permit for the construction, installation, modification, abandonment, or repair of OSTDS in certain circumstances where a publicly owned or investor-owned sewage system is not available.

3.13 2020 Clean Waterways Act (SB 712, Chapter 2020-150, Laws of Florida)

In 2020, the Florida Legislature passed Senate Bill 712, also known as the Clean Waterways Act, now Chapter 2020-150, Laws of Florida. This legislation law focuses on minimizing the impact of nutrient pollution sources and strengthening the state's regulatory requirements for septic systems, stormwater runoff, wastewater treatment plants, as well as fertilizer used in agricultural production.

3.13.1 Stormwater Requirements

A key aspect of this legislation is the intent to reduce nutrient inputs resulting from stormwater runoff. The act directed the FDEP and Florida's water management districts to update the stormwater design and operation regulations under Part IV, Chapter 373, and Florida Statutes (F.S.), using the latest scientific information. Rulemaking efforts began with a Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee. This provided a forum for identifying and constructively outlining recommendations to the FDEP and water management districts for strengthening the stormwater design and operation regulations implemented under Part IV, Chapter 373, F.S., including updates to the Environmental Resource Permit Applicant's Handbook (AH). FDEP has initiated rulemaking with several workshops scheduled to obtain input from all stakeholders, including making recommendations for rule edits and/or providing comments. Revisions to the AH are likely to include increased performance standards for stormwater management systems, additional dam safety criteria, removal of previously approved stormwater BMPs, inspection frequencies, operation and maintenance requirements, and off-site compensatory treatment considerations. Proposed modifications to the AH which are likely to impact the Watershed include:

- The new rule sets a percent reduction for all stormwater management systems requiring an Environmental Resource Permit.
 - All sites are required to have treatment systems designed to achieve an 80% reduction of Total Nitrogen (TN) and Total Phosphorus (TP) from the post-development condition.

- Sites contributing to Outstanding Florida Waterbodies (OFWs) are required to have their treatment systems achieve a 95% reduction of TN and TP from the post-development condition.
- Sites contributing to waterbodies on the verified list of impaired waters, or with Total Maximum Daily Loads (TMDLs), would be required to meet an 80% reduction of TN and TP from the post-development condition as well as any other applicable pollutant reduction required. Net improvement is required for stormwater management systems that discharge into impaired waters.
- Redevelopment sites that are unable to meet the proposed state standards would be able to use an alternative lower standard of treatment.
 - Redevelopment sites are required to achieve an 80% reduction of TP and 45% reduction of TN, or when contributing to an OFW they would be required to achieve a 95% reduction in TP and a 50% reduction in TN.
 - These alternative standards would not be available to systems contributing to a waterbody that does not meet state standards.
- Any stormwater system that is within a HUC 12 that also contains an OFW would be required to meet the standards for OFWs.
- Any stormwater system that is within a hydrologic unit code 12 (HUC 12) that also contains a waterbody that does not meet state standards or has a TMDL would also be required to meet the performance standards for those waterbodies.
- Modeling validation of stormwater management system's ability to meet minimum performance standards for nutrients – applicants will be required to demonstrate, through modeling or calculations, that the proposed stormwater management system will meet minimum performance standards for nutrients.

3.13.2 Septic System Requirements

The act transferred the Florida Department of Health (DOH) Onsite Sewage Program (OSP) to the FDEP. Twelve OSP program office staff moved into FDEP's Division of Water Resource Management. OSP staff in DOH County Health Departments (CHDs) remain at CHDs.

The act became active on August 1, 2021, expires on August 15, 2022, and temporarily creates an Onsite Sewage Treatment and Disposal System (OSTDS) Technical Advisory Committee, per section 381.00652, F.S., with 10 members. The committee submitted recommendations on December 30, 2021, to the Governor and Legislature. The recommendations included the following:

- Increase the availability of nutrient-reducing OSTDS technology in the marketplace.
- Fast track/expedite approval of enhanced nutrient reducing OSTDS.
- Further study the appropriate setback distances to surface water, groundwater, and wells.
- Maintain current permit setbacks to water requirements until further study, per technical advisory committee recommendation.
- Define what Basin Management Action Plans (BMAPs) and onsite sewage treatment and disposal systems (OSTDS) remediation plans are and reference their requirements when a BMAP is adopted.
- The requirement to upgrade existing systems will need ratification due to costs to the regulated community.
- Add allowance for a variance for undue hardship if the OSTDS is not contributing/causing exceedance of TMDL in BMAP- adopted area.

3.13.3 Wastewater System Requirements

The act incorporates provisions to minimize untreated wastewater discharges. Such provisions include:

- Contingency plans for power outages to minimize discharges of untreated wastewater for all sewage disposal facilities.
- Provision of financial records from all sanitary sewage disposal facilities so that FDEP can ensure funds are being allocated to infrastructure upgrades, repairs, and maintenance that prevent systems from falling into states of disrepair.

3.14 Florida Coastal Management Program (FCMP) under the “Coastal Zone Management Act”¹²

In 1978, the Florida Legislature adopted the Florida Coastal Zone Management Act (CZMA), codified as Chapter 380, F.S., Part II, Coastal Planning and Management. This legislation authorized the development of the Florida Coastal Management Program (FCMP) and its submittal to the federal government.

In 1981, the FCMP was approved by the Secretary of NOAA. The FDEP is designated as the lead agency for the FCMP pursuant to the CZMA. FDEP’s Office of Resilience and Coastal Protection is charged with overseeing the state’s coastal management program and handles the following FCMP activities:

- Compiles and submits the federal applications for receiving funds pursuant to the CZMA.
- Adopts rule procedures and criteria for the evaluation of Coastal Partnership Initiative (CPI) and state agency sub-grant applications for funds allocated to the state under the CZMA.
- Administers the Coastal and Estuarine Land Conservation Program (CELCP), a federally funded land acquisition program.
- Conducts the CZMA Section 309 assessment and strategies for coastal resource issues.
- Administers the Beach Access Sign Program, the Beach Warning Flag Program, and the Rip Current Awareness Program.
- Prepares routine program updates to incorporate annual statutory changes.
- Maintains informational materials and procedural guidelines.
- Provides education and outreach materials.
- Guides the coordination of the federal Consistency review process.
- Conducts training workshops for those entities involved in the federal consistency process.
- Provides, to the highest practicable extent, financial, technical, research, and legal assistance to effectuate the purposes of the Florida Coastal Management Act.
- Acts as a resource for the partner agencies in the Coastal Management Program.

The CZMA requires a state’s coastal management plan to identify the boundary of its coastal zone, which includes the area of land and water from the territorial limits landward to the most inland extent of marine influences. Based on the geography of Florida and the legal basis for the state program, the entire state of Florida is included within the coastal zone. The coastal zone extends nine nautical miles into the Gulf of Mexico. For planning and developing coordinated projects and initiatives relating to coastal resource protection and management, and for completing federal consistency reviews of federally licensed and

¹² CZMA § 306(c) (also referred to as 16 U.S.C. § 306(c))

permitted activities, only the geographical area encompassed by the 35 Florida coastal counties and the adjoining territorial sea is utilized.

Federal consistency is the requirement that federal actions that affect any land, water, or natural resource of a state's coastal zone must be consistent with the enforceable policies of the state. The FCMP federal consistency process consists of a network of 24 Florida Statutes (i.e., enforceable policies) administered by FDEP and a group of partner agencies responsible for implementing the statutes.

The following FDEP programs conduct the state's federal consistency reviews:

- a. **The Office of Intergovernmental Programs, Florida State Clearinghouse**
The Florida State Clearinghouse coordinates federal consistency reviews of proposed federal activities, requests for federal funds, and applications for all federal licenses and permits that do not require an analogous state permit.
- b. **The Division of Water Resource Management, District Offices**
The water management district offices coordinate federal consistency reviews of ERPs for activities requiring an analogous federal license or permit in the coastal counties.
- c. **The Division of Water Resource Management; Beaches, Inlets, and Ports Program**
- d. The Beaches, Inlets, and Ports program coordinate consistency reviews of ERPs for activities requiring an analogous federal license or permit that affect existing coastal conditions or natural shore and inlet process.
- e. **The Office of Resilience and Coastal Protection, Offshore Projects Unit**
The Offshore Projects Unit coordinates consistency reviews of direct federal activities and federal license & permit activities that are proposed in the offshore Outer Continental Shelf (OCS) waters.
- f. **The Siting Coordination Office**
The Siting Coordination Office coordinates the interagency review and certification for building and operating power plants, transmission lines, and natural gas pipelines.

The following agencies are charged with the implementation of the Florida Statutes that are included in the FCMP as enforceable policies:

- Florida Department of Agriculture and Consumer Affairs (FDACS) manages state forests for multiple public uses through wildfire prevention & management; water resource management; hydrologic restoration; development of best management practices for water quality and water conservation; and implementation of TMDL requirements for agriculture. FDACS regulates aquaculture facilities and shellfish processing plants; opens and closes shellfish harvesting waters to protect human health; restores oyster reefs to maximize productivity; issues leases of sovereignly submerged lands for aquaculture; monitors shellfish meat for red tide cells and brevetoxins, and manages an online real-time water quality monitoring program in shellfish harvesting areas. FDACS also provides technical assistance, certification, and training to approximately 300 mosquito control programs and regulates the use of pesticides to protect public health.
- Florida Department of Economic Opportunity (FDEO), Division of Community Development is the state land-planning agency responsible for guiding Florida's growth. FDEO oversees compliance with requirements for local government comprehensive planning, developments of regional impact, and development in areas of critical state concern. FDEO assists local governments in hazard mitigation planning, post-disaster redevelopment planning, and other initiatives to increase emergency preparedness and mitigate the short & long-term effects of hazard events. The special needs of coastal communities are being addressed by the Waterfronts Florida Program, marina facility siting strategies, and other initiatives. FDEO also implements and administers numerous community assistance and grant programs, including Front Porch Florida.

- Florida Department of Health (DOH), Division of Environmental Health regulates drinking water, and onsite sewage disposal systems monitor beach water for bacterial indicators & aquatic toxins, particularly harmful algal blooms, and administers many other programs designed to reduce illness and prevent disease caused by exposure to environmental factors. In consultation with FDEP and Florida Fish and Wildlife Conservation Commission (FWC), DOH determines if toxins are present in fish from Florida waters and issues fish consumption advisories as needed.
- Florida Department of State (DOS), Division of Historical Resources protects state historical and archaeological resources, including the regulation of treasure salvage in the oceans adjacent to Florida and the development of a system of underwater archaeological preserves. The Division of Historical Resources also created the Florida Maritime Heritage Trail, which links coastal communities, forts, lighthouses, historic ports, and historic shipwrecks.
- Florida Department of Transportation (FDOT) develops and maintains the state's transportation system. In consultation with state agencies and the Florida Coastal Management Program, the FDOT developed an early coordination process for transportation project planning, known as Efficient Transportation Decision Making, which integrates federal consistency reviews with other project planning, development, and evaluation processes.
- Florida Division of Emergency Management (FDEM) ensures that Florida is prepared to respond to emergencies caused by a wide variety of threats, recover from disasters, mitigate disaster impacts, and reduce or eliminate long-term risks to human life and property. FDEM administers programs to help rebuild lives and communities, including the Public Assistance and Individual Assistance Programs, the Hazard Mitigation Grant Program, the Flood Mitigation Assistance Program, and the National Flood Insurance Program.
- Florida FWC protects and manages fresh & saltwater fisheries, marine mammals, birds, and upland game & non-game animals (including endangered species). FWC's Fish and Wildlife Research Institute (FWRI) is the state's principal biological research entity. FWRI monitors changes in water quality and levels of contaminants in Florida's fresh & marine waters, including levels of mercury in fish, and monitors & tracks harmful algal bloom events.
- The Florida Building Commission of the Florida Department of Business and Professional Regulation is a 25-member technical body responsible pursuant to Section 553.73, F.S., for the adoption of the Florida Building Code. The current code is a single statewide code based on national model codes and consensus standards, amended for Florida-specific needs for the design and construction of buildings.
- The regional water management districts (WMDs), which are organized along watershed lines, are responsible for the comprehensive planning, management, and development of water resources for consumptive uses & water resource preservation. The state's WMDs, in partnership with the FDEP, regulate activities in wetlands and other waters of the state. Pursuant to Sections 380.23 and 373.428, F.S., the WMDs are responsible for conducting federal consistency reviews as part of permit reviews in coastal counties under Section 373 part IV, F.S.

The following is a list of the enforceable policies (statutory authorities) incorporated in the federally-approved FCMP:

- Chapter 161 Beach and Shore Preservation
- *Not approved as enforceable policy: Sections 161.011; .031; .0415; .05301; .071; .091; .111; .121; .144; .163; .181; .25; .26; .27; .28; .29; .31; .32; .33; .34; .35; .37; .38; .39; .40; .45; .52; .53; .57; .70; .72; .73; .74; and .76.*
- Chapter 163, Part II Intergovernmental Programs: Growth Policy; County and Municipal Planning; Land Development Regulation

- *Enforceable policy includes only Sections 163.3161; .3164; .3177; .3178; .3180(2); .3184; .3187; .3194(1)(a); .3202(2)(a-h); and .3220(2)&(3).*
- Chapter 186 State and Regional Planning
Not approved as enforceable policy: Sections 186.005; .0201; .505; .512; .513; and .901.
- Chapter 252 Emergency Management
Not approved as enforceable policy: Sections 252.351; .3569; .359; .3655; .515; .62; .63; .905; .921; and .9335.
- Chapter 253 State Lands
Not approved as enforceable policy: Sections 253.01; .0251; .027; .031; .034; 61(1)(d); .7824; .7828; .87; and .90.
- Chapter 258 State Parks and Preserves
Not approved as enforceable policy: Sections 258.001; .004; .014; .0142; .0145; .015; .016; .0165; .017; .021; .027; .034; .041; .081; .09; .11; .12; .14; .15; .158; .35; .36; .38; .43; .435; .46; and .601.
- Chapter 259 Land Acquisitions for Conservation or Recreation
Not approved as enforceable policy: Sections 259.01; .03; .032; .0322; .035; .036; .037; .042; .045; .047; .05; .07; .101; .1051; .1052; .10521; and .1053.
- Chapter 260 Florida Greenways and Trails Act
Not approved as enforceable policy: Section 260.011; .012; .0125; .013; .014; .0141; .0142; .0144; .015; .016; .0161; .017; .019; and .021.
- Chapter 267 Historical Resources
Not approved as enforceable policy: Sections 267.011; .0612; .0617; .0618; .062; .0625; .071; .0731; .074; .0743; .075; .076; .081; .145; .16; .161; .17; .172; .173; .1732; .1735; and .1736.
- Chapter 288 Commercial Development and Capital Improvements *Enforceable policy include only sections 288.972 and .975.*
- Chapter 334 Transportation Administration
Not approved as enforceable policy: Sections .01; .03; .035; .044; .045; .046; .047; .048; .049; .05; .063; .065; .071; .131; .17; .175; .179; .185; .187; .193; .195; .196; .24; .27; .30; .351; .352; and .60.
- Chapter 339 Transportation Finance and Planning
Enforceable policy only includes Sections 339.175 and .241.
- Chapter 373 Water Resources
Not approved as enforceable policy: Sections 373.037; .044; .0465; .103; .1135; .171; .246; .308; .4143; .4144; .4146; .459; .4598; .462; .463; .472; .475; .535; .536; .584; .59; .5905; .701; .703; and .813.
- Chapter 375 Outdoor Recreation and Conservation Lands
Not approved as enforceable policy: Section 375.031; .041; .044; .075.
- Chapter 376 Pollutant Discharge Prevention and Removal
Not approved as enforceable policy: Sections 376.011; .3073; .3075; .317; and .41.
- Chapter 377 Energy Resources
Not approved as enforceable policy: Sections 377.06; .21; .22; .24(9); 24075; .242(1)(a)5; .2434; .2435; .6015; .801-.810; and .815.
- Chapter 379 Fish and Wildlife Conservation
Not approved as enforceable policy: Sections 379.1026; .107; .206; .207; .212; .213; .214; .2202; .223; .2231; .2251; .2255; .2256; .2273; .2293; .2311; .2433; .359; .362; and .4041

- Chapter 380 Land and Water Management
Not approved as enforceable policy: Sections 380.06(24)(t); .0666; .23(3)(d); and .507.
- Chapter 381 Public Health; General Provisions
Enforceable policy includes only Sections 381.001; .0011; .0012; .006; .0061; .0065; .00651; .0066; and .0067.
- Chapter 388 Mosquito Control
Not approved as enforceable policy: Sections 388.261 and .271.
- Chapter 403 Environmental Control
Not approved as enforceable policy: Sections 403.061(40); .0616; .0617; .0671; .0673; .0675; .076; .078; .08601; .0874; .1832; .414; .50663; .70611; .709; .7095; .7125(2)&(3); .7264; .763; .805; .8055; .871; .873; .874; .885; .928; and .941.
- Chapter 553 Building and Construction Standards Enforceable policy include only Section 553.79.
- Chapter 582 Soil and Water Conservation
Not approved as enforceable policy: Sections 582.055; .06; and .32.
- Chapter 597 Aquaculture
Not approved as enforceable policy: Sections 597.001; 597.0021; .0045; and .005.

3.15 NPDES (Chapters 62-620, 62-621, 62-624, F.A.C.)

The FDEP implements the stormwater element of the federal National Pollutant Discharge Elimination System (NPDES). The stormwater element of the federal NPDES program is mandated by Section 402(p) of the Clean Water Act (CWA), which is set out in the federal statutes at 33 U.S.C. Section 1342(p) and implemented through federal regulations including 40 Code of Federal Regulations (CFR) 122.26.

The NPDES Stormwater Program in Tallahassee is responsible for the development, administration, and compliance of rules and policy to minimize and prevent pollutants in stormwater discharges. Operators of these sources may be required to obtain an NPDES permit before they can discharge stormwater. The NPDES Stormwater Program regulates point source discharges from three potential sources: Municipal Separate Storm Sewer Systems (MS4s), construction activities, and industrial activities.

3.15.1 Construction (Chapter 62-621, F.A.C.)

Operators of construction activities must obtain coverage under an NPDES stormwater permit and implement appropriate pollution prevention techniques to minimize erosion and sedimentation and properly manage stormwater. A generic permit is a general permit issued by FDEP under the authority of Section 403.0885, Florida Statutes (F.S.), which is the provision authorizing the state to implement the NPDES program. The NPDES stormwater program regulates discharges that are associated with "large" and "small" construction activities.

Large construction activity is defined by the following characteristics:

- Disturbs five acres or greater of land, or
- Disturbs less than five acres of land that is part of a larger common plan of development or sale that will ultimately disturb five acres or greater.

Small construction activity is defined by the following characteristics:

- Disturbs equal to or greater than one, and less than five. acres of land, or
- Disturbs less than one acre of land that is part of a larger common plan of development or sale that will ultimately disturb between one and five acres.

3.15.2 Municipal Separate Stormwater Sewer System Permit (MS4)¹³ (Chapter 62-624, F.A.C.)

The NPDES Stormwater Program is a national program, mandated by Congress under the Clean Water Act, to address non-agricultural sources of stormwater discharges that adversely affect the quality of our nation's waters. The program, administered by the EPA and delegated to the FDEP, regulates the discharge of stormwater by municipalities. FDEP issued an NPDES permit to Escambia County as a co-permittee with the City of Pensacola, the town of Century, and the Florida Department of Transportation in 1999. This permit, which contains strict monitoring and reporting requirements, was renewed on January 1, 2017, and is valid for five years.

Authorized by Section 403.0885, F.S., the FDEP's federally approved NPDES Stormwater Program is set out in various provisions within Chapters 62-4, 62-620, 62-621, and 62-624 of the Florida Administrative Code (F.A.C.). Chapter 62-624, F.A.C., specifically addresses MS4s.

Within the Watershed, both Escambia County and the City of Pensacola are authorized to discharge stormwater to waters of the State, in accordance with the approved Stormwater Management Programs (SWMPs), effluent limitations, monitoring requirements, and other provisions as set forth in the permit, the application and other documents on file with the FDEP and made a part hereof, from all portions of the MS4 owned or operated by Escambia County and City of Pensacola.

3.15.2.1 Authorized Discharges

Except for discharges specifically prohibited, this permit authorizes all existing stormwater point source discharges to waters of the State from those portions of the MS4s owned or operated by the County and City. New stormwater discharges are authorized provided they meet all applicable requirements of the NFWFMD ERP Program authorized pursuant to Part IV of Chapter 373, F.S.

The County and City are individually responsible for:

1. Compliance with permit conditions relating to discharges from portions of the MS4 where they are the operator.
2. Implementation of their SWMP on portions of the MS4 where they are the operator.
3. Compliance with the permit conditions relating to those portions of the MS4 for which they are the operator.
4. A plan of action to assume responsibility for the implementation of stormwater management and monitoring programs on their portions of the MS4 should inter-jurisdictional agreements allocating responsibility between permittees be dissolved or in default; and
5. Submission of annual reports.
 - a. -Collection of monitoring data.
 - b. Ensuring implementation of system-wide management program elements, including any system-wide public education efforts.

3.15.2.2 Limitations on Coverage

Pursuant to Section 403.0885, F.S., and rules promulgated thereunder, and consistent with Section 402(p)(3)(B)(ii) of the CWA, this permit includes a requirement to effectively prohibit non-stormwater

¹³ A conveyance, storage area, or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds, and other structural BMPs) owned or operated by a local government that discharges to waters of the United States or to other MS4s, that is designed solely for collecting, treating or conveying stormwater, and that is not part of a publicly owned treatment works (POTW) as defined by 40 C.F.R. 122.2 or any amendments thereto.

discharges into the storm sewers within each permittee's MS4. Consequently, this permit does not authorize the following discharges:

1. Discharges of non-stormwater, except where such discharges are authorized under the provisions of Chapter 373 or 403, F.S., or rules promulgated thereunder.
2. Discharges of material resulting from a spill, except where such discharges are:
 - a. The result of an Act of God where reasonable and prudent measures have been taken to minimize the impact of the discharge; or
 - b. An emergency discharge is required to prevent an imminent threat to human health or prevent severe property damage, where reasonable and prudent measures have been taken to minimize the impact of the discharge.

3.15.2.3 Monitoring Requirements

Annual Loadings and Event Mean Concentrations.

1. Each permittee shall provide estimates of the average annual pollutant loading for the specified constituents¹⁴ for each "major outfall" or "major watershed" within their MS4. The average annual pollutant loading for each major outfall or major watershed shall be estimated using local event mean concentrations (EMCs) derived from storm event monitoring or the State's EMCs listed in the FDEP's NPDES Phase I MS4 Permitting Resource Manual (most current version) and shall take into consideration land uses within the drainage areas associated with the outfall or watershed.
2. Each permittee shall provide a table of average annual pollutant loadings and EMCs. Each permittee shall compare the current cycle's average annual pollutant loadings with those from the previous cycle's Year 3 annual report. In addition, each permittee shall specify the source of the data used (local storm event monitoring or state EMCs) and methods or models used for the calculations. The model or method must normalize the average annual pollutant loading estimates to reflect variations in annual rainfall. Based on this comparison of average annual pollutant loadings, the permittees shall indicate whether pollutant loadings are increasing or decreasing for each major outfall or major watershed. The permittee shall submit average annual pollutant loading information with the Year 3 annual report.
3. If the total annual pollutant loadings for each parameter for the specified constituents have not decreased since the issuance of the previous MS4 permit, each permittee shall reevaluate its SWMP and identify and submit revisions to its SWMP, as appropriate, to reduce pollutant loadings, especially to impaired waters, in the Year 4 annual report.

3.15.2.4 Assessment Program

The purpose of the assessment program is to provide information for the permittee to determine the overall effectiveness of the SWMP in reducing stormwater pollutant loadings from the MS4. The following elements were used to develop the assessment program for Escambia County's final MS4 Permit¹⁵:

- a. A water quality monitoring plan is intended to identify local sources where urban stormwater is adversely affecting surface water resources.
- b. Pollutant loadings.

¹⁴ Biochemical Oxygen Demand (BOD5) (mg/L) Total Copper (mg/L) Total Nitrogen (as N) (mg/L) Total Phosphorus (mg/L) Total Suspended Solids (TSS) (mg/L) Total Zinc (mg/L)

¹⁵ Permit Number: FLS000019-004 69

- c. A description of how the data from a and/or b above will be used to (1) evaluate trends in pollutant loadings from the MS4 and water quality, and (2) identify portions of the MS4 which can be targeted for loading reduction /corrective action with additional pollutant reduction measures.

Escambia County, in cooperation with the City of Pensacola and FDOT, was required to submit an assessment program as a condition of the permit. The program specifies which permittees are collaborating on which elements of the assessment program.

The annual report is to include the following:

- a. Status of water quality monitoring plan implementation. Status may include sampling frequency changes, monitoring location changes, or sampling waiver conditions.
- b. A brief discussion of the assessment program results to date, which includes a summary of the water quality monitoring data and/or stormwater pollutant loading changes from the reporting year. Note: Results must be specific to each permittee's SWMP.
- c. An analysis of the data discussing changes in water quality and/or stormwater pollutant loading from previous reporting years.

3.15.3 Industrial (Chapter 62-621, F.A.C.)

Florida's NPDES stormwater program regulates all industrial activities that:

- Have stormwater discharges to surface waters of the state or into an MS4, and;
- Are included in any one of the 11 categories of "stormwater discharges associated with industrial activity" identified in 40 CFR 122.26(b)(14) (adopted by reference within Rule 62-620, F.A.C.).

The 11 categories are defined using both narrative descriptions of the activities and Standard Industrial Classification (SIC) codes. (Note: The North American Industry Classification System (NAICS) will eventually replace the SIC system. The U.S. Bureau of the Census has a conversion table¹⁶ to bridge the two systems.)

Multi-Sector Generic Permit (MSGP) Requirements

A generic permit is a general permit issued by FDEP under the authority of Section 403.0885, Florida Statutes (F.S.), which is the provision authorizing the state to implement the NPDES program. In October 2000, Florida adopted under Rule 62-621.300(5)(a), F.A.C., the federal stormwater multi-sector general permit for industrial activities (comprising the original September 29, 1995, issuance and subsequent corrections/modifications) and operates the permit as the State of Florida Multi-Sector Generic Permit (MSGP) for Stormwater Discharge Associated with Industrial Activity.

3.16 Wastewater Collection System and Transmission Facilities (Chapter 62-604, F.A.C.)

This rule is intended to protect the waters of the state from illicit wastewater discharges. This rule applies to both new and existing domestic wastewater collection/transmission facilities. A sanitary sewer system (i.e., publicly and privately owned sewer infrastructure) may contribute to pollution to the environment through the slow and continuous leakage of sanitary sewer infrastructure and sanitary sewer overflows "SSOs". The rule requires all collection systems to be operated and maintained in a manner to prevent SSOs.

In Escambia County, the Emerald Coast Utilities Authority (ECUA) owns and maintains the sanitary sewer system that serves the Watershed. In 2012, ECUA entered a consent order with FDEP because of several SSOs. The consent order requires the development of a "Comprehensive Evaluation Plan" followed up with the implementation of a "Corrective Action Plan". It is anticipated that Bayou Texar will see water quality improvements because of the full implementation of the Corrective Action Plan when it is approved. As part

¹⁶ <https://www.naics.com/naics-to-sic-crosswalk-search-results/>

of the Bayou Texar Bacteria Pollution Control Plan (BPCP), ECUA will identify specific corrective actions that will be implemented in the basin.

4.0 LOCAL REGULATIONS

4.1 Escambia County

4.1.1 Escambia County Comprehensive Plan:2030

The comprehensive plan provides the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. Stated briefly, the plan represents Escambia County's vision of how it wants to grow and change – how it will develop its land, redevelop older areas, ensure adequate housing, provide roads and sewers, protect natural areas, and meet other community objectives.

4.1.2 Zoning Regulations (Ordinance No. 2015-12, § 1(Exhibit A), 4-16-2015; LDC Part III, Chapter 3)

This ordinance establishes county zoning districts necessary to implement the distribution and extent of land uses prescribed by the future land use categories and related policies of the comprehensive plan. Regulations for each district specify the allowable uses of land and structures, the density and intensity of those uses, and other standards that define what portion of any parcel a structure or use may occupy. Special purpose overlay zoning districts further specify allowable uses and other requirements in areas of unique character or condition. Compliance with the provisions of this chapter is evaluated by the administrative authorities described in Land Development Code LDC Part III, Chapter 1 and according to the compliance review processes prescribed in Chapter 2. This ordinance intends to:

- a. Provide for the orderly and efficient distribution of agricultural, residential, commercial, mixed-use, industrial, recreational, conservation, and other land uses to meet the physical, social, civic, security, economic, and other needs of present and future populations.
- b. Promote sustainable land development that minimizes sprawl, avoids the under-utilization of land capable of sustaining higher densities or intensities, and maximizes the use of public investments in facilities and services through urban infill and redevelopment.
- c. Promote the economic stability of existing land uses that are consistent with the comprehensive plan, protecting them from intrusions by incompatible land uses and ensuring that new development is compatible in character and size.
- d. Preserve the character and quality of residential neighborhoods.
- e. Promote both mixed-use buildings and mixed-use neighborhoods, where residential and business uses may overlap to the enhancement and benefit of both.
- f. Balance individual property rights with the interests of the community to create a healthy, safe, and orderly living environment.

4.1.3 Stormwater Management (Ordinance No. 2015-12, § 1(Exhibit A), 4-16-2015; LDC Part III, Chapter 5, Article 2, Section 5-2.7; Design Standards Manual (DSM) Chapter 5)

This ordinance addresses concurrency for developments that place a demand for the additional stormwater runoff on stormwater management facilities. Escambia County requires that all stormwater management systems be designed to meet the following requirements:

1. Treatment (Quality)- To provide for the treatment of the first ½" of runoff which shall be recovered in 72 hours. The method of treatment shall comply with the design methods referenced in the latest edition of the Environmental Resources Permit Applicants Handbook Volume II.
2. Attenuation (Quantity)-
 - a. Provide attenuation of the runoff from a 100-year critical duration event¹⁷, up to and including 24-hour duration, so that the post-development runoff rate does not exceed the predevelopment runoff rate, when a positive discharge route is present, or
 - b. Drainage systems in areas with no positive drainage outlet shall be designed to more stringent criteria to include retention up to and including twenty-four (24) hour, one hundred (100) year frequency storm with no offsite discharge. These systems shall remain private and will not be accepted by the County for ownership and maintenance, or
 - c. For projects that abut the Gulf of Mexico, Escambia Bay, Pensacola Bay, Perdido Bay, or their connected, tidally influenced bodies of water (i.e. Tarkiln Bayou, Chico Bayou, Bayou Texar, etc.) the County Engineer may reduce or waive the stormwater management system from stormwater quantity requirements.

4.1.4 Wetland Protection (Ordinance No. 2015-12, § 1(Exhibit A), 4-16-2015; LDC Chapter 4, Article 5, Section 4.5.3; DSM Chapter 2, Wetlands)

This ordinance protects wetlands as defined in Florida Administrative Code (Chapter 62-340) from draining, dredging, filling, excavating, building, pollution, and other alterations or acts that will reduce or otherwise adversely impact their ecological functions and public benefits. Protection measures also include the requirement of an upland buffer consisting of a minimum width of 15 feet and an average width of 25 feet abutting those wetlands under the regulatory jurisdiction of the State of Florida under 62-340, F.A.C. The buffer may be reduced to an average 10-ft. buffer for those development activities that avoid impacts on wetlands. The code provides for conditional exemptions for single-family dwellings, agricultural and silvicultural uses, and utility activities.

4.1.5 Marine, Estuarine, and Riverine Shorelines (MERS) (Ordinance No. 2015-12, § 1(Exhibit A), 4-16-2015; Ordinance No. 2018-6, § 1, 2-1-2018; LDC Chapter 4, Article 5, Section 4-5.5)

This ordinance protects marine, riverine, and estuarine shorelines. Marine shoreline protection does not apply to the Watershed.

Estuarine shoreline protection applies to all shorelines of subtidal habitats and adjacent tidal wetlands of brackish water bodies. These estuarine systems include bays, sounds, lagoons, bayous, river mouths, saltwater marshes, and canals. This would include shorelines adjacent to Bayou Texar and Pensacola Bay. The estuarine protection zone includes that area located 15-ft. landward of the mean high-water line. The ordinance requires the shorelines of estuarine systems to be retained in their natural state to the extent possible. The ordinance recommends that stabilization be accomplished with appropriate native vegetation in accordance with accepted engineering and environmental practices and/or criteria set forth in 62-346.051(14), F.A.C. wherever practical.

No new construction is allowed along an estuarine shoreline within the established shoreline protection zone, except for the following:

¹⁷ Escambia County uses FDOT Intensity Duration Frequency (IDF) curves for Zone 1 as referenced in FDOT's drainage handbook.

- a. Walkways, boardwalks, gazebos, docks, piers, boathouses, seawalls, bulkheads, or other retaining walls, and structures necessary for permitted water-dependent and water-related uses may be permitted within the shoreline protection zone.
- b. Armored shorelines may only be permitted within the shoreline protection zone where vegetative or other natural methods of shoreline stabilization have been determined by the County to not be practical.

The riverine shoreline provisions of the ordinance apply to all shorelines of surface water habitats that periodically or continuously contain flowing water and their associated wetlands. These riverine systems include rivers, tributaries, perennial streams, and intermittent streams, but do not include ditches, swales, or other manmade features created for stormwater control. This would include Carpenter Creek and all its unnamed tributaries that have an ordinary high-water line. The riverine shoreline protection zone includes that area located 30 feet landward from the ordinary high-water line.

This ordinance affords protection to vegetation located within the protection zone. The removal or destruction of existing native submergent and emergent vegetation in this zone is prohibited, unless determined by the County to be necessary for the protection of life and property.

No new construction is allowed along a riverine shoreline within the established shoreline protection zone, except for the following:

- a. Walkways, boardwalks, gazebos, docks, piers, boathouses, seawalls, bulkheads, or other retaining walls, and structures necessary for permitted water-dependent and water-related uses may be permitted within the shoreline protection zone.
- b. Road crossings to allow access to developable uplands.

Rigid shoreline protection structures may be allowed within the riverine shoreline protection zone (extending 15 feet landward of the ordinary high-water line) according to the same limitations required for estuarine shorelines.

4.1.6 Tree Protection (Escambia County Design Standards Manual Sec. 2-3 & 2-3.1 "Tree Protection & Preservation"; 2-4 "Tree Inventory & Assessment; 2-4.1 "Inventory area"; 2-4.2 "Inventory drawing"; DSM, Chapter 2, Article 2 landscaping, Section 2-3 Tree Protection & Preservation, 2-4.1)

The Escambia County Land Development Code affords protection to any defined protected tree 12" or greater in diameter at breast height (DBH) and any heritage tree 60" or greater in DBH, with the only exception being sand live oaks. Any tree species on the most recent Florida Exotic Pest Plant Council list of invasive species, any species of pine (*Pinus* sp.), cherry laurel (*Prunus laurocerasus* and *Prunus caroliniana*), or turkey oak (*Quercus laevis*) tree are not protected.

4.1.7 Florida Friendly Use of Fertilizer on Urban Landscapes (Ordinance No. 2013-50, § 2, 11-21-2013; LDC Chapter 42, Article IX)

This ordinance requires adherence to the management measures contained in the most recent edition of the Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries. This ordinance provides:

- Restrictions for the timing of fertilizer application
- Establishes fertilizer-free zones
- Recommends low maintenance zones

- Adherence to application rates as directed by F.A.C. Rule 5E-1.003(2), Labeling Requirements for Urban Turf Fertilizers
- Management of grass clippings and vegetative matter
- Training and licensing requirements for commercial fertilizer applicators

The provisions of this section shall be enforced pursuant to those methods prescribed by F.S. Chapter 162 and Chapter 30, Escambia County Code of Ordinances. Funds generated by penalties imposed under this section shall be used by Escambia County for the administration and enforcement of F.S. § 403.9337 and this section of the Escambia County Code of Ordinances, and to further water conservation and nonpoint pollution prevention activities.

4.1.8 Storage of hazardous or infectious wastes (LDC Chapter 82, Article IV, Division 1, Section 82-139; Code 1985, § 1-29-113)

Hazardous or infectious wastes whose uncontrolled release into the environment would cause acute and/or chronic effects on air and water quality; on fish, wildlife, or other biotas; and on the health and welfare of the public, shall be stored or transported only in special containers where due regard has been given to the hazardous nature of the waste, protective enclosures, and operating procedures, and where adequate measures are taken to assure personal safety, accident prevention, and detection of potential environmental damages.

4.2 City of Pensacola Regulations

4.2.1 Future Land Use and Zoning Districts (Code 1986, § 12-2-1; Ordinance No. 29-93, § 1, 11-18-1993; Ordinance No. 13-06, § 4, 4-27-2006; Ordinance No. 28-07, § 1, 6-14-2007)

The City is divided into future land use and zoning districts. Each land use district shall contain a set of zoning districts that may be permitted within its boundaries and are consistent with its allowable uses.

4.2.2 Bayou Texar Shoreline Protection District (Code 1986, § 12-2-27; Ordinance No. 8-99, § 3, 2-11-1999; Ordinance No. 12-21, § 1, 6-17-202)

The purpose of this district is to establish standards that recognize and protect the environmental resources of the Bayou Texar shoreline. These standards ensure the preservation of the natural buffering effect of open spaces along the shoreline for storm surge abatement and the filtering of stormwater runoff and enhances the public's recreational and aesthetic utilization of the shoreline and adjacent waters. The ordinance identifies a shoreline protection zone that includes all property abutting Bayou Texar, bounded on the north by the 12th Avenue bridge and on the south by the L & N trestle located at the mouth of the bayou.

Prior to the issuance of a building permit for construction within the Bayou Texar shoreline protection district, the owner, developer, or contractor is required to submit to the City planning and engineering departments a drainage plan indicating soil erosion and sedimentation control measures that will be undertaken to prevent runoff into Bayou Texar during construction and indicating methods to accommodate stormwater runoff on-site during and after construction.

Within the protection zone habitable structures are required to observe the following minimum setback from the mean high-water line:

1. Properties with R-2, R-2A, and R-ZL zoning shall require a 20-foot setback from the mean high-water line of Bayou Texar.
2. Properties with R-1AA, R-1AAA, and R-1AAAA zones shall require a 30-foot setback from the mean high-water line of Bayou Texar.

3. Properties with R-1AAAAA zoning shall require a 60-foot setback from the mean high-water line of Bayou Texar.
4. Lots of record shall require a minimum 20-foot setback from the mean high-water line of Bayou Texar.

This ordinance also implements a variety of development guidelines, including:

1. Structures should be sited to retain the maximum amount of open space for natural stormwater retention.
2. Where possible and practical, existing vegetation, including shoreline vegetation, should be maintained as a buffer between development and the surface waters of Bayou Texar.
3. Development within the shoreline protection zone that would be dependent on future bulkheading or other shoreline fortification for protection shall be discouraged.
4. Proposed stormwater treatment facility shall be situated laterally across the width of the subject property and parallel to the shoreline (or provide grading, collection, and conveyance mechanism) to the greatest extent possible, in order to route and contain stormwater runoff from the up-gradient yard into a stormwater treatment facility,
5. Proposed stormwater treatment facility shall be located at the farthest possible and practical downstream location adjacent to the shoreline without causing any adverse impacts to the shoreline or existing vegetative buffers. The facility shall be sized to provide treatment for one inch of runoff and provide a minimum of six inches of freeboard above the treatment volume elevation. The City engineer may increase these requirements as warranted based on site-specific circumstances and conditions.

Finally, this ordinance protects public access by reserving public use and public access for all of the street right of way that terminates into the bayou.

4.2.3 Stormwater Management and Control of Erosion, Sedimentation, and Runoff (Code 1986, § 12-9; Code of Ordinances, Part II, Title XII, Chapter 12-8)

This ordinance establishes responsibility for the alleviation of the harmful and damaging effects of on-site generated erosion, sedimentation, runoff, and the accumulation of debris on the adjacent downhill and/or downstream properties, and to avert the attendant deterioration of downstream bodies of water.

This ordinance requires certain activities to implement a stormwater management plan that complies with applicable state regulations¹⁸. The ordinance requires the first one inch of runoff shall be retained on the development site. Design frequency varies depending on the proposed outfall. For example, stormwater management facilities with approved positive outfall shall be designed to attenuate the 100-year/critical duration storm event. The City Engineer may waive or reduce this requirement if the stormwater management facility discharges directly into a natural outfall after treatment, does not contribute to potential or existing flooding conditions, and does not increase pollutant loading. Retention facilities that fall within a closed drainage basin and have no positive outfall shall retain the entire runoff volume from a 100-year storm event and shall include all storm durations up to and including the 24-hour duration¹⁹. This retention volume must be recovered within 72 hours of the contributing storm event by natural percolation or other approved means.

¹⁸ 62-330, F.A.C.

¹⁹ City of Pensacola uses FDOT Intensity Duration Frequency (IDF) curves for Zone 1 as referenced in FDOT's drainage handbook.

Detention and/or retention facilities that connect directly to the City's storm drainage system shall be designed so that the post-development discharge rate does not exceed the pre-development discharge rate for a ten-year/critical duration storm event. Where the existing capacity of the City storm drainage system is not adequate to accept the discharge from a ten-year storm event, the City engineer may reduce the allowable post-development discharge rate from the detention facility to an acceptable level. Detention and/or retention facilities that do not connect directly to the City storm system or have a direct impact on the system shall be allowed to discharge up to the pre-development rate for the 100-year/critical duration storm event or as otherwise approved by the City engineer.

The drainage area used in runoff calculations includes the total natural watershed area including areas beyond proposed site limits (offsite runoff). Recovery time for treatment/retention volume is a maximum of 72 hours. Recovery time for facilities that are under drained or side drained is 36 hours.

4.2.4 Stormwater Utility Fee

The stormwater utility fee was initiated in response to the overwhelming stormwater improvements needed in the Watershed, which is estimated to total \$26 million. The revenue generated by the stormwater utility fee is estimated at \$1.5 million annually. Some of the projects identified for funding during the next five years, which is made possible by the new revenue generated by the stormwater utility fee, include:

- "L" and Zarragossa Street drainage improvements
- 12th Avenue at Carpenter Creek
- Admiral Mason Park stormwater retention
- Bayou Chico stormwater outfall retrofits
- Baywood Gulley stormwater enhancements
- Carpenter Creek at Brent Lane
- Gabberonne Swamp stormwater enhancements
- Installation of City-wide stormwater treatment vaults

The utility fee is distributed to the properties which are placing a burden on the City's stormwater system. The amount of burden is relative to the amount of runoff from the property, measured in terms of the impervious area found on the parcel. The impervious area includes the roof area, paved parking, driveways, and other similar "hard" surfaces.

4.2.5 Tree Protection (Code 1986, § 12-6-6; Ordinance No. 31-09, § 1, 9-10-2009; Ordinance No. 16-10, § 217, 218, 9-9-2010; Ordinance No. 04-21, § 5, 2-25-2021; Ordinance No. 14-21, § 1, 7-15-2021)

This ordinance affords protection to a wide variety of tree species²⁰

4.2.6 Fertilization (Ordinance No. 17-20, § 1, 7-16-2020)

This chapter regulates the proper use of fertilizers by any applicator; requires proper training of commercial and industrial fertilizer applicators; establishes training and licensing requirements; establishes a prohibited application period; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The chapter requires the use of Best Management Practices (BMPs) which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on the City's natural and constructed stormwater conveyances, rivers, creeks, canals,

²⁰ See City of Pensacola Ordinances; Chapter 12-6, Appendix A, "Protected Tree List"

springs, estuaries, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural, and economic well-being of the residents of the City and the health of the public. Overgrowth of algae and vegetation hinders the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality. Key aspects of the ordinance include:

- **Timing of Fertilizer Application** – prohibits application during periods of soil saturation
- **Fertilizer Free Zones** – Restricts fertilizer application within ten feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the state department of environmental protection or from the top of a seawall, unless a deflector shield, drop spreader or liquid applicator with a visible and sharply-defined edge is used, in which case a minimum of three feet shall be maintained.
- **Establishes low maintenance zones** - A ten-foot low maintenance zone is required from any pond, stream, water course, lake, wetland, or from the top of a seawall. A swale/berm system is required to be installed at the landward edge of this low maintenance zone to capture and filter runoff.
- **Application rates** – requires application in accordance with the requirements and directions provided by F.A.C. 5E-1.003(2), Labeling Requirements for Urban Turf Fertilizers. Restricts fertilizer application before seeding or sodding.
- **Application practices** – Established best management practices for the application of fertilizers.
- **Management of Grass Clippings and Vegetative Matter** - Prohibits discharge of grass clippings, vegetative material, and/or vegetative debris into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadway.
- **Training and licensing**– require training and licensing for commercial applicators.

4.0 POTENTIAL RECOMMENDATIONS

The following is a list of potential recommendations which may benefit and help achieve the overall goals of this watershed management plan:

- Stormwater Design Parameters

Escambia and the City of Pensacola's attenuation requirements are based on FDOT's Intensity Duration Frequency (IDF) curves which were developed using data that is more than twenty years old and, in our opinion, do not consider the effects of climate change. Both City and County should consider using NOAA Atlas 14, which is an official peer-reviewed record of precipitation frequency estimates for the United States and produced by the National Weather Service (NWS) Office of Water Prediction, part of NOAA. Precipitation frequency estimates in NOAA Atlas 14 have been computed using a regional frequency analysis approach based on L-moment statistics calculated from the annual maximum series (AMS). These estimates are greatly improved compared to the corresponding estimates from superseded publications in terms of accuracy, reliability, and resolution. The IDF estimates provided by NOAA represent a model that better represents recently observed climatic conditions.

- Stormwater Utility Fee

Escambia County should consider a similar utility fee similar to the fee collected by the City of Pensacola, especially for the portion of the Watershed under their regulatory purview. It is widely known that stormwater is a major contributor to the degradation of this Watershed. Current state and local stormwater regulations provide mechanisms to ensure treatment and, in some cases, attenuation of storm flows, but it is the legacy developments constructed prior to any stormwater controls that have degraded, and continue

to degrade, the Watershed. Revenues generated from the utility fee could be used to complete stormwater retrofit projects to provide treatment and attenuation of storm flows for these legacy developments.

- Provide stakeholder input on pending Environmental resources and state/federal 404 permits within the watershed.

Both Escambia County and the City of Pensacola should take an active role in the review of pending applications. The County and City should identify any concerns related to the project's environmental effects and or any other public interest factors relative to the overall health of the Watershed. The FDEP (state 404) and Corps (federal 404) rely on such comments to determine whether to issue, modify, condition or deny any requested authorization.

- Escambia County & City of Pensacola fertilizer ordinances

Both municipalities should consider revising each respective fertilizer ordinance to better protect the watershed. Several coastal counties in central and south Florida adopted strict fertilizer ordinances following several well-publicized algal blooms. Pinellas, Hillsborough, Manatee, Sarasota, Polk, Lee, and Collier counties are among the 90 Florida communities that have banned the use of phosphorus and nitrogen during the summer months. Pinellas county has severe penalties for violating the ban including a \$10,000 a day fine for those who break the ordinance. They have adopted the slogan of "Only rain down the rain". Escambia County and the City of Pensacola should work together to adopt a singular ordinance to include a prohibition on the use of fertilizers during the summer months (June 1 to September 30). Additionally, the county and city should work with local retailers to encourage the placement of educational signage where fertilizers are sold to inform area residents of local restrictions.

- Escambia County & City of Pensacola litter ordinances

City and county should consider a common litter ordinance to include siting criteria for waste containment within the watershed to reduce unintentional leakage associated with commercial municipal trash collection.