

**RULES OF THE
ENVIRONMENTAL PROTECTION
COMMISSION
OF HILLSBOROUGH COUNTY**

**CHAPTER 1-11
WETLANDS**

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PART I

1-11.01 INTENT

1. The intent of this rule is to provide local standards for the protection, maintenance and utilization of wetlands within Hillsborough County, while providing consistency with the statewide standards for the identification and delineation of wetlands, recognizing the rights of individual property owners to use their lands in a reasonable manner as well as the rights of all citizens to protection and purity of the waters of Hillsborough County and their associated wetland ecosystems. The value of wetlands is demonstrated by their ability to receive, store

and discharge surface water runoff so as to contribute to the hydrological stability of water courses, lakes, or bays; control flooding and erosion; provide filtration and uptake of nutrients and pollutants from surface water runoff; provide habitat for plant and animal species, including those species listed by the Fish and Wildlife Conservation Commission and/or U. S. Fish and Wildlife Service; provide a significant ecological function in the life cycle of fish, wildlife or other forms of animal or plant life of neighboring habitats; function as an integral part of a surface water course, lake or bay; increase rainfall production through available evaporative surfaces and recharge the groundwater; buffer adjacent uplands from hurricane and tidal storm surges; and provide recreational opportunities to the citizens of Hillsborough County. It is the policy of the State of Florida and the Environmental Protection Commission to preserve the essential character of wetland property. The owner of wetlands has no right to use them for a purpose for which they are unsuited in their natural state. It shall be the priority of the Environmental Protection Commission to avoid the disturbance of wetlands in the County and to encourage their use only for purposes which are compatible with their natural functions and environmental benefits. It is the intent of the Commission that development requiring mitigation be a last resort used only when reasonable use of the property is otherwise unavailable.

2. Marine wetlands are particularly valuable resources to the residents of the county, providing protection to water quality in the bay, prevention of erosion and siltation, and natural habitat for aquatic life upon which the local economy is dependent. Their importance to the ecological system and values of the Tampa Bay region requires that they be protected from the adverse impacts of human activities. The Commission will use available resources and media to provide information to the public, especially boaters and swimmers, regarding the nature, value and fragility of marine wetlands, and so to enlist their assistance in avoiding such adverse impacts as much as possible.

Section History - Amended July 22, 2004

1-11.02 DEFINITIONS

1. The definitions contained in sections 62-340.200 and 62-345.200, F.A.C. are adopted by reference.

2. The following definitions shall apply for purposes of this rule unless a contrary meaning is clearly indicated:

a. **Adverse Impact** - a negative affect upon a wetland, resulting from development which contaminates, alters or destroys, or which contributes to the contamination, alteration or destruction of a wetland or portion thereof such that its environmental benefits are destroyed, reduced or impaired or which threatens their present or future functioning.

b. **Development** - any manmade change to real property, including but not limited to dredging, filling, grading, paving, excavating, clearing, timbering, ditching or draining.

c. **Mitigation Plan** - specific development activities designed to restore, create, or replace environmental benefits of wetlands within the area.

d. **Mitigation Areas** - wetland or upland areas created, preserved, enhanced, or restored for mitigation purposes pursuant to agreement with governmental officials.

e. **Recovery Areas** - areas designated by the Commission pursuant to Section 1-11.20 as requiring special protection to recover and restore their ecosystems functions.

g. **Waters of the County** - waters, both surface and under-ground, which are located either entirely or partially within the geographic boundaries of Hillsborough County, and also the physical features which regularly or seasonally contain water by inundation or saturation of surface or groundwater in years of normal water conditions. Waters of Hillsborough County include but are not limited to the water and containing physical features of bays, rivers, streams, lakes, ponds, swamps, springs, impoundments and other waters whether naturally or artificially created and whether fresh, brackish, saline or tidal.

h. **Wetlands** - areas as defined by section 373.019(17), F.S. included within waters

of the County which are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps, seagrass beds, and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

Section History – Amended July 22, 2004

1-11.03 IDENTIFICATION OF WETLANDS

Under normal circumstances, wetlands will be identified by visual application of the definition of wetlands considering the dominance of plant species, soils and other hydrologic evidence indicative of regular and periodic inundation or saturation.

Section History – Amended June 28, 1994

1-11.04 DELINEATION OF WETLANDS

1. Sections 62-340.300, 62-340.400, 62-340.450, 62-340.500, 62-340.550, and 62-340.600 F.A.C. providing the statewide method as amended by the Legislature for delineating wetlands in Florida, are adopted by reference. Qualified developments granted vested or grandfathered rights pursuant to Section 373.421(7) F.S. shall be delineated as provided

therein.

2. Upon request of any person with a legal or equitable interest including governmental bodies, and upon payment of the appropriate fee as established in Chapter 1-6 of these Rules, a formal determination approving a certified survey, or an approximate delineation as reflected on a scaled site plan, shall be issued as to the existence and extent of any wetlands upon specific lands within Hillsborough County. Failure to make a wetland determination within 30 days of receipt of a complete request and payment therefore shall entitle the applicant upon appropriate notice, to a hearing before a hearing officer as provided in Section 9 of Chapter 84-446, Laws of Florida.

3. Delineations made upon interpretation of aerial photography are subject to modification by future on-site inspection.

4. Delineations pursuant to a formal determination or pursuant to a DEP or SWFWMD permit where the delineation was field-verified and specifically approved in the permit shall be binding for five years provided physical conditions on the property do not change to alter the boundaries during that time.

5. All other determinations made prior to the effective date of this rule shall be presumptively valid only.

6. This section shall not be construed as limiting the right of any citizen to register a complaint or request investigation of an alleged violation.

Section History – Amended December 18, 1997

1-11.05 POLLUTION PROHIBITED

1. Development within wetlands of Hillsborough County which destroys, reduces or impairs the wetland or which contributes to the present or potential future destruction, reduction or impairment of the environmental benefits provided by the wetland or a portion thereof constitutes pollution as defined by Chapter 84-446, Laws of Florida, as amended, and is prohibited except to the extent as may be specifically authorized in writing by the Executive Director or his authorized agent.

2. The intentional or knowing destruction of marine wetlands by filling, excavation, dredging, prop-dredging, contamination, or other development as defined herein, except as provided in section 1-11.24, is a violation of this rule; ordinary fishing practices (such as casting a line, using tackle or nets, anchoring, etc.) shall not be construed as destruction of marine wetlands when conducted outside of designated Marine Recovery Areas.

3. Knowing failure to comply with the restrictions of a management plan within a designated Recovery Area is a violation of this rule.

Section History – Amended December 18, 1997

1-11.06 REVIEW OF PROPOSED DEVELOPMENT WITHIN WETLANDS

Section History - Repealed and transferred in part July 22, 2004

1-11.07 ENVIRONMENTAL PROTECTION COMMISSION AUTHORIZATION

Written authorization may be given to conduct proposed development affecting wetlands only if reasonable use of the land cannot be accomplished without affecting the wetland, and only if the environmental benefits provided by the affected wetland are adequately protected by specified conditions and time limitations which would be imposed upon approval of the development.

Projects which otherwise would be violations of this rule may be permitted within wetlands if a permit, reviewed by the Commission and subject to specific conditions, is obtained from the Tampa Port Authority.

The Commission may require that an applicant provide proof of financial responsibility to ensure proper and successful completion of a mitigation plan. Financial responsibility may be established and assured by a number of methods, including but not limited

to: performance bond, irrevocable letter of credit, deposit of cash or cash equivalent into an escrow account, or guarantee bond. The Commission will accept suitable financial responsibility mechanisms held by other regulatory agencies upon assurance that the fund be available to EPC to complete the approved mitigation requirements.

Development pursuant to such authorization shall be periodically inspected to ensure compliance with the conditions imposed. Failure to comply with any condition, including conditions contained in a Tampa Port Authority permit, shall be a violation of this rule subject to administrative and judicial enforcement and penalties under Chapter 84-446, Laws of Florida.

Section History – Amended December 18, 1997

1-11.08 MINIMUM REQUIREMENTS OF A MITIGATION PLAN

1. Pursuant to section 373.414(18), Florida Statutes, Rules 62-345.200, F.A.C., through 62-345.900, F.A.C., are adopted in their entirety and are applicable to and enforceable by the Commission. Upon request to the Environmental Protection Commission, a review of proposed developments affecting wetlands will be made and Rules 62-345.200-900, F.A.C., shall be used by the Commission and applied to wetland development applications to determine the amount of mitigation needed to offset adverse impacts to wetlands and to award and deduct mitigation bank credits. Where any conflicts in rule language exists, Rules 62-345.200-900, F.A.C., shall govern over Chapter 1-11.

2. The Commission shall apply Rules 62-345.200-900, F.A.C., in determining the required mitigation for secondary impacts. In determining secondary impacts, the Commission shall consider the diminishment of ecological value in those wetland areas adjacent to a proposed direct wetland impact.

3. The application of Rule 62-345.200-900, F.A.C., is not intended to supersede or replace existing rules regarding cumulative

impacts, justification of impacts as necessary for reasonable use of the property, or to determine the appropriateness of the type of mitigation proposed.

4. The appropriate mitigation must have equal or better ecological value as compared to the affected wetland prior to impacts.

5. Where wetlands are proposed to be impacted for an activity associated with mining operations that qualify for the exemption in subsection 373.414(15), Florida Statutes, or will otherwise not be subject to Rule 62-345, F.A.C., pursuant to subsection 62-345.100(9), F.A.C., an acceptable mitigation plan shall include at least acre for acre replacement of the same or better type of wetland providing the environmental benefits lost by reason of the proposed development. Section 1-11.08(1), adopting Rules 62-345.200-900, F.A.C., shall not apply to those exempted activities listed in section 1-11.08(5),

6. Where wetlands are or may be adversely impacted by development, an acceptable mitigation plan shall include detailed plans designed to compensate for any adverse impact to the environmental benefits and shall comply with Commission rules and Rules 62-345.200-900, F.A.C. All such mitigation must also comply with the following:

a. specific design requirements based upon conditions of the site and the type of mitigation required;

b. a schedule to remove exotic or nuisance vegetation;

c. monitoring and replacement to assure a specified survival rate of vegetation for a reasonable period as specified in the plan;

d. the entire mitigation area must be confined within the geographic boundaries of Hillsborough County;

e. a recorded designation in the Official Records of Hillsborough County as a permanent conservation easement as defined in section 704.06, F.S., whenever the mitigation area(s) alone or cumulatively exceed 0.5 acres;

f. all upland areas preserved for purposes of mitigation, regardless of their size, shall be permanently preserved through a conservation easement as defined in section

704.06, F.S., and

g. an acceptable mitigation plan shall be reasonable and technically feasible.

7. An applicant for wetland impacts may also obtain mitigation for wetland impacts by purchasing mitigation credits from a fully permitted wetland mitigation bank or through the use of an offsite regional mitigation area. The Commission may also award and deduct mitigation bank credits from a mitigation bank pursuant to the standards in this rule. All reasonable attempts shall be made to locate this mitigation effort within the geographic boundaries of Hillsborough County.

Section History – Amended July 22, 2004

1-11.09 ADEQUATE PROTECTION

(1) Only development under the following circumstances shall be determined to provide adequate protection of the environmental benefits:

(a) Where the adverse impact is of a temporary nature and an acceptable mitigation plan will restore the wetland to provide its previous environmental benefit at the earliest feasible time. Temporary, for purposes of this part, means a reasonable time considering the activity involved, but any impact of more than a year's duration shall require a Commission vote of approval;

(b) Where an acceptable and appropriate mitigation plan, pursuant to section 1-11.08, will adequately protect the environmental benefits provided by the affected wetland;

(c) Where the adverse impact is of nominal consequence to the wetland or other surface water, as defined by Section 62-340.600, F.A.C., the impact will be reviewed as a "Miscellaneous Activities in Wetlands" under Section 1-11.10. Wetland or other surface water impacts under this authorization shall be minimized to the greatest extent practicable, unless defined herein by size, and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts;

(d) Where the adverse impact is offset

by the benefit of the development to the public, such that it is clearly in the public interest and an acceptable mitigation plan is proposed. Examples may include, in appropriate circumstances, the construction of public roads or other public works; or

(e) Where adverse impact can be prevented by appropriate precautions, such as control of the quantity and quality of stormwater run off into wetland systems.

(2) Consideration shall be made of cumulative impacts of proposed development to the wetland system in combination with other developments which have been or may be proposed in the same drainage basin.

Section History – Adopted May 14, 1985; Amended July 22, 2004; Amended August 16, 2007;
Effective date: August 20, 2007

1-11.10 MISCELLANEOUS ACTIVITIES IN WETLANDS

(1) Upon request of any person with a legal or equitable interest including governmental bodies, and upon payment of the appropriate fee as established in Chapter 1-6, the Executive Director or authorized agent shall review an application to determine whether any of the following activities qualify for a Miscellaneous Activities in Wetlands authorization:

(a) Development consisting of less than 500 square feet of permanent impact for the purpose of crossing any artificially created ditches. This authorization does not apply to ditches that divert historic perennial or intermittent streams or creeks.

(b) Nuisance and exotic vegetation removal in wetlands. Phased removal of the vegetation or replanting with wetland desirable species may be necessary to ensure erosion control and / or to ensure the area is adequately re-vegetated.

(c) Other miscellaneous activities in wetlands as provided in section 1-11.09(1)(c) that are not exempt under section 1-11.11. These activities include but are not limited to construction of boardwalks, docks, pilings, rip

rap, aids to navigation, boat lifts, outfall structure placements, herbaceous vegetation removal for minor swim access areas not to exceed 25 feet of shoreline, boat ramps for single family residences, and other similar structures or activities.

(2) Development activities in wetlands that qualify under this section do not need to satisfy the reasonable use requirement in section 1-11.07 or mitigation under section 1-11.08.

(3) Conditions and limitations applicable to all above activities:

(a) These activities do not apply to wetlands or other surface waters that serve as significant habitat, such as roosting, nesting or denning areas, for state listed threatened or endangered species.

(b) Although not required as part of an application for impacts, these activities shall not cause offsite adverse impacts, including flooding, or otherwise affect the local hydrology so as to adversely affect other wetlands.

(c) These activities shall include best management practices for erosion, turbidity and other pollution control to prevent violations of state or Commission water quality standards.

(d) Activities authorized under this section do not imply exemption from obtaining all proper permits or complying with regulations of other federal, state or local agencies.

Section History – Adopted August 16, 2007;
Effective date: August 20, 2007.

1-11.11 EXEMPTIONS

(1) The following activities in wetlands and other surface waters in Hillsborough County shall be exempt from the application of Chapter 1-11 provided the development is reviewed and approved by other appropriate agencies as necessary:

(a) Standard Exemptions.

(i) Maintenance within all roadway drainage ditches which contain water only following the occurrence of rainfall and which ditches are not adjacent or contiguous to other wetlands or other surface waters. However, activities authorized under this section may not

increase the length, width, depth and/or sideslopes of any drainage system beyond its original design or permitted specifications, if available. Additionally, this exemption does not apply to ditches that divert historic perennial or intermittent streams or creeks;

(ii) Development within artificially created stormwater treatment (including tailwater recovery ponds) and conveyance systems designed solely for the purpose of stormwater treatment, which are permitted by Hillsborough County, the Florida Department of Environmental Protection, or the Southwest Florida Water Management District; and works, impoundments, reservoirs, and other watercourses constructed and operated solely for wastewater treatment or disposal in accordance with a valid permit issued under Chapter 373, F.S., or Chapter 403, F.S. or the Hillsborough County Land Development Code. This exemption specifically excludes those systems, works, impoundments, reservoirs, and other watercourses which incorporate wetlands which existed before construction of the stormwater / wastewater treatments systems listed above, or are proposed to be altered through expansion into wetlands or other surface waters; and

(iii) Development consisting of 500 square feet or less of permanent impact for the purpose of crossing any artificially created ditches if the activity has been reviewed and approved by Hillsborough County or any municipality. This exemption shall apply only to a maximum of two crossings on a given parcel of property, with a minimum distance of 500 feet between crossings. This exemption does not apply to ditches that divert historic perennial or intermittent streams or creeks.

(b) Noticed Exemptions. Thirty (30) calendar days after verified receipt by the Executive Director of written notice of the proposed activity, and upon no agency denial being issued, the following activities in wetlands and other surface waters shall be exempt from the application of Chapter 1-11 provided the activity is reviewed and approved by other appropriate agencies as necessary.

(i) Development within artificially

created ditches which were excavated within predominantly upland soils, within the project limits, for the purpose of draining water from the land or wetlands, or for transporting water for use on the land, and which are not built for any navigational or recreational purpose. However, alterations authorized under this section may not increase the length, width, depth and/or sideslopes of any drainage system beyond its original design or permitted specifications, if available. Additionally, this provision does not apply to ditches that divert historic perennial or intermittent streams or creeks;

(ii) Development within wholly owned artificially created wetlands or other wholly owned surface waters less than one (1) acre in surface area, such as stock watering ponds, which were constructed entirely in historic uplands, including those areas legally converted to uplands, as determined through review of historic aerial photography and soil mapping; and

(iii) Alterations to commercial fish ponds, whether for food or the pet trade.

(2) Conditions and limitations applicable to all above exempt activities:

(a) These exemptions do not apply to wetlands or other surface waters that serve as significant habitat, such as roosting, nesting or denning areas, for state listed threatened or endangered species.

(b) These exemptions do not apply to any filling activity using anything other than clean fill as defined in 62-701.200(38) or (15), 62-701.730(15), F.A.C.

(c) Development under these exemptions shall not cause offsite adverse impacts, including flooding, or otherwise affect the local hydrology so as to adversely affect other wetlands.

(d) These exemptions do not apply to wetlands created, enhanced, or restored as mitigation for wetlands or surface water impacts under a permit issued by the Executive Director, DEP, SWFWMD or United States Army Corps of Engineers.

(e) The development under these exemptions shall include best management

practices for erosion, turbidity and other pollution control to prevent violations of state or Commission water quality standards.

(f) This section shall not apply to those artificial wetlands or surface waters which were constructed pursuant to a permit under Part IV, Chapter 373, Florida Statutes.

(g) Exemptions under this section do not apply to activities reviewed under the Mangrove Trimming and Preservation Rule Chapter 1-14.

(h) These exemptions do not imply exemption from obtaining all proper permits or complying with regulations of other federal, state or local agencies.

Section History – Adopted August 16, 2007;
Effective date: August 20, 2007

PART II (Wetland Recovery Areas)

Part History - Adopted June 16, 1992
Amended December 18, 1997

1-11.20 DESIGNATION OF RECOVERY AREAS

The Commission may in an advertised public hearing, designate a wetland located on public property, or on private property if written consent of the property owner is obtained, as a Recovery Area and adopt a management plan if: The wetland has been damaged by or is in jeopardy from known or unknown causes, and the wetland can reasonably be expected to recover or be restored if the area is protected through appropriate limitations and a management plan.

1-11.21 DELINEATION OF THE RECOVERY AREAS

1. Wetland Recovery Areas shall be delineated and described. Mappings and descriptions shall be kept on file.

2. The Recovery Area may be marked and signs posted on site as appropriate.

1-11.22 MANAGEMENT PLANS

Management Plans will be developed by the Executive Director and adopted by the

Commission at an advertised public hearing and will be kept on file. A Management Plan may include:

1. Prohibitions or limitations of specific uses or activities; types of equipment, vehicles, or vessels; type or quantity of development, or times of use. Such limitations must be tailored to avoid or prevent further damage, but they should not needlessly restrict non-damaging uses. Prohibitions or limitations are appropriate when the unrestricted activity would, in reasonable scientific judgment, adversely effect or impair:

endangered, threatened, or species of special concern as to nesting, reproduction, food source, habitat or cover or affect the vegetation itself; available habitat for fish and aquatic life or result in emigration from adjacent or associated ecosystems and macro habitats; existing biosystems or ecosystems; or recovery of an impaired system. Provisions for planting of appropriate aquatic plants, augmented public education, increase monitoring or the like;

A time limit for imposing the restrictions, which may be extended at an advertised public hearing, or a timetable to accomplish specified goals;

Specific criteria to determine success and effectiveness of the Management Plan.

1-11.23 MONITORING AND EVALUATION

The Commission shall establish and implement a specific monitoring plan to determine the success or failure of the Management Plan. Criteria may include:

Percent of vegetative cover over an identified area;

Identification and species diversity, estimated population size or biomass; and

Water clarity for submerged systems and water quality.

1-11.24 TERMINATION OF RECOVERY AREA RESTRICTIONS

Upon determining that optimum recovery of the damaged wetlands has occurred and that further restrictions are unnecessary, the Commission may rescind the restrictions placed on the Recovery Area by a public

announcement, reserving the right to reinstate restrictions if necessary for the protection of the wetlands.

Rule History:

Adopted 5/14/85

Amended 9/24/90

Amended 11/14/90

Part II Added 6/16/92

Part III Added 9/23/92, Effective 12/7/92

Parts I and III Amended 6/22/94

Amended 12/18/97

Amended referenced Sections 7/22/04

Amended referenced Sections 8/16/07