

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

BASIS OF REVIEW

For

**AUTHORIZATION OF ACTIVITIES PURSUANT TO
CHAPTER 1-11 - WETLANDS**

DRAFT

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I. CHAPTER I - INTRODUCTION

1.1 Intent and History:

The Environmental Protection Commission of Hillsborough County (EPC) was created in 1967 by a special act of the Florida Legislature (Chapter 67-1504, Laws of Florida). The current enabling act, the Environmental Protection Act of Hillsborough County Chapter 84-446, Laws of Florida, as amended, (EPC Act) authorizes the EPC to adopt appropriate rules and regulations reasonably necessary to provide for the effective and continuing control and regulation of water pollution in Hillsborough County. The EPC enabling act further defines water pollution in Section 3(15) as any contamination, destruction, or other alteration, or any activity which contributes to such contamination, destruction, or other alteration, of any physical, chemical, or biological feature or property of any waters of Hillsborough County. It is the purpose of this Basis of Review to provide guidelines and standards for the Executive Director's issuance or denial of an authorization to impact wetlands or other surface waters subject to jurisdiction under Section 1-11.04 of the EPC Wetland Rule.

The EPC recognizes the environmental benefits provided by wetlands and other surface waters in Hillsborough County. Pursuant to the EPC Rule Section 1-11.05, development within wetlands and other waters of Hillsborough County which destroys, reduces or impairs the wetland or other waters or which contributes to the present or potential future destruction, reduction or impairment of the environmental benefits provided by the wetland or other waters, constitutes pollution as defined by the EPC Act, and is prohibited except to the extent as may be specifically authorized in writing by the Executive Director or authorized agent. Development is defined under Section 1-11.02(2)(b) as "any manmade change to real property, including but not limited to dredging, filling, grading, paving, excavating, clearing, timbering, ditching or draining." Any activity interfering with the integrity of a wetland or other surface water, such as clearing, excavating, draining or filling, without written authorization from the Executive Director of the EPC or authorized agent, pursuant to Sections 1-11.06 and 1-11.07, Rules of the EPC, would be a violation of Section 17 of the EPC Act and Chapter 1-11, Rules of the EPC.

1.2 Application and Review Process

The EPC Wetlands staff comments on different types of land development activities by reviewing applications submitted to other governmental agencies such as Hillsborough County, the Tampa Port Authority, and the municipalities; which are then forwarded to the EPC for comment. The applications include, but are not limited to, re-zonings, subdivisions, land alteration and landscaping, land excavation, phosphate mining, and site development reviews for commercial sites and residential subdivisions. On occasion, the EPC is requested to comment on other County or municipal permits. These include building permits for single family homes, the siting of septic tanks and septic systems, and right-of-way use permits. The EPC has entered into agreements with other agencies to perform some reviews on behalf of those agencies. The EPC Wetland Division also performs reviews under the EPC Mangrove Trimming and Alteration Rule Chapter 1-14

pursuant to an Order of Delegation and Operating Agreement dated October 19, 2006 with the Florida Department of Environmental Protection. This Basis of Review is not intended to address mangrove permitting or exemptions, and information on that subject should be reviewed specifically in Chapter 1-14.

Independently the EPC reviews wetland or surface water impact proposals through noticed exemptions, Miscellaneous Activities in Wetlands applications, or wetland impact and mitigation proposals. This Basis of Review is intended to clarify and further define the standards provided in the EPC Wetland Rule Chapter 1-11, for these reviews.

Chapter II - JURISDICTIONAL DELINEATIONS / BOUNDARY DETERMINATIONS

2.1 Purpose:

Pursuant to Section 1-11.04, the EPC has adopted the statewide methodology used for determining the landward extent of wetlands and other surface waters to establish the applicable EPC jurisdiction for impacts prohibited under Section 1-11.05. This methodology is used to identify the interface between surface waters, including wetlands, and uplands to review and verify the avoidance of direct and secondary impacts to wetlands or other surface waters.

2.2 Description:

Wetland delineations are often referred to as wetland jurisdictional determinations. In Hillsborough County, wetlands and other surface waters are regulated by the EPC, pursuant to Chapter 1-11, Rules of the EPC. Wetlands are specifically identified in the state and EPC rules as a subset of surface waters. Wetland delineations are performed in accordance with the unified wetland delineation methodology described in Chapter 62-340, F.A.C., *Delineation of the Landward Extent of Wetlands and Surface Waters*.

Wetland delineations are conducted during a field assessment of the property at the request of the property owner or authorized agent. Using the delineation methodology described in Chapter 62-340 F.A.C., an EPC staff Environmental Scientist establishes points in the field, or reviews the points established by the applicant, at the landward extent of the wetland and other surface waters. These points are established by using consecutively numbered flagging, staking, or other similar means of marking. After the EPC staff delineates the landward extent of surface waters or wetland line it is the responsibility of the applicant to have the line surveyed.

2.3 Formal Determinations:

To obtain a formal binding 62-340, F.A.C. determination an applicant must provide a certified survey of the wetland and surface water limits to be reviewed and approved by the EPC staff. This survey must meet the requirements of Chapter 61G17-6, F.A.C., pursuant to Chapter 472.027, Florida Statutes. The Specific Purpose Survey shall include the surveyed property boundaries with the surveyed wetland or surface water points

identified thereon. The surveys must depict the appropriate State Plane Coordinates or bearings and distances, the wetland points labeled as flagged in the field, wetland line labeled as "wetland line", wetland labeled as "Wetland Area" or "Wetland" and / or other surface waters labeled as "Surface Waters." The EPC staff formal approval of a certified survey, pursuant to a signatory delegation from the Executive Director, shall be binding for a period of five (5) years from the date of approval provided physical conditions on the property do not change.

2.4 Informal Determinations:

Pursuant to Section 1-11.04(2), Rules of the EPC, an approximate delineation as reflected on a scaled site plan may be accepted as to the existence and extent of any wetlands upon any lands within Hillsborough County. An informal wetland determination is only valid for the purpose of reviewing a specific project and is not binding on the parties. Informal jurisdictional determinations are generally only to be used when no impact to wetlands or other surface waters on the property is proposed.

CHAPTER III - CONDITIONS FOR ISSUANCE OR DENIAL

3.1 Criteria for issuance of approval or denial of Executive Director Authorization to impact wetlands or other surface waters:

3.1.1 Reasonable Use - Pursuant to Section 1-11.07, a wetland or other surface water shall not be authorized to be impacted if the impact to the wetland or surface water is not necessary for the reasonable use of a parcel of property. Any impacts authorized under this rule shall be reduced to the minimum amount necessary. Reasonable use is further addressed and defined in Section 3.2 below.

3.1.2 Adequate Protection - Pursuant to Section 1-11.07, a wetland or other surface water shall not be authorized to be impacted if the environmental benefits provided by the affected wetland are not adequately protected by specified conditions which would be imposed upon approval of the impact. Conditions for adequate protection of environmental benefits are addressed in Section 1-11.09 and are further addressed and defined in Section 3.3 below.

3.2 Guidelines for determining reasonable use pursuant to Section 1-11.07:

3.2.1 "Reasonable use of the land." For purposes of this Basis of Review and the EPC Wetland Rule, "reasonable use" shall mean an actual, present use or activity on a parcel of real property or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject parcel of property, and which are compatible with adjacent land uses. Reasonable use of the property does not mean the highest and best use of the property. In determining whether the impact is necessary for reasonable use of a parcel of property each of the following factors may be considered:

- a.) The current zoning of the parcel of property on which the wetland or other surface water is located;
- b.) Whether the denial of the impact would result in a loss of all or substantially all

economic value of the property;

- c.) Existing development on or use of the property (including the applicable zoning, permitting and subdivision history of that parcel);
- d.) The buildable area of a parcel as shown by a survey or drawing of the parcel of property (to scale) accurately depicting the location of the wetland or other surface water including the minimum setbacks required by any applicable municipal or Hillsborough County codes, or homeowners' association or deed restrictions adopted prior to the adoption of the EPC Wetland Rule;
- e.) Whether the impact is for the purpose of accessing available buildable uplands where no alternative legal means of access is available and reasonable use of the entire property would otherwise be unattainable;
- f.) Documented efforts by the applicant to design or redesign the proposed development, structure or use in a manner that retains or preserves the wetland or other surface water;
- g.) The wetland or other surface water regulations in effect at the time the property owner acquired title to the parcel of property and / or whether the property was subdivided, separated from its parent tract, or developed in such a way as to result in a self imposed hardship;
- h.) Whether the impacts are solely for the purpose of environmental restoration projects;
- i.) Documented efforts by the applicant to seek waivers or variances from any other development restrictions that would result in or necessitate impacts;
- j.) Whether the impacts are necessary for the protection of public health and safety; and
- k.) Any other pertinent information or special circumstances affecting the development of the parcel of property, including but not limited to, any unusual topography and fill requirements, or unique engineering requirements.

The EPC recognizes that each property in Hillsborough County is unique and that any one or more of these factors in itself will not necessarily constitute reasonable use.

3.2.2 Definition of the "Land." Determination of what constitutes the "land" as provided in Section 1-11.07 for purposes of this Basis of Review and the EPC Wetland Rule is a question involving the consideration of three factors: physical contiguity; unity of ownership; and unity of use. The land shall be defined as the entire parcel or property under common ownership.

3.3 Adequate Protection: For purposes of Chapter 1-11, adequate protection shall be determined using the provisions available under Section 1-11.09. Adequate protection is the review of the proposed adverse impacts to the environmental benefits provided by the wetland or other surface water and how those adverse impacts will be addressed. Typically adverse impacts will be addressed through mitigation as provided in Section 1-11.08. However, the rule also allows consideration of temporary impacts and nominal wetland impacts which do not require the same mitigation. Temporary impacts are addressed in Section 1-11.09(1)(a). Wetland or other surface water impacts that are of nominal consequence are addressed in Section 1-11.10 as "Miscellaneous Activities in Wetlands" and are addressed under Chapter V below.

Pursuant to Section 1-11.09(2), adequate protection also requires consideration of cumulative impacts. A cumulative impacts review is done by considering other developments or activities which have been or may be proposed in the same drainage basin.

CHAPTER IV - MITIGATION

4.1 Mitigation: Unless otherwise noted, pursuant to Sections 1-11.09(1), adequate protection of the environmental benefits provided by wetlands or other surface water will be addressed through mitigation of an approved impact as provided in Section 1-11.08. Section 1-11.08 adopts by reference Rule 62-345.200 -.900, F.A.C., the Unified Mitigation Assessment Method (UMAM). The UMAM is designed to assess any type of impact and the proposed mitigation, including the preservation, enhancement, restoration, and creation of wetlands and preservation and enhancement of uplands, as well as the evaluation and use of mitigation banks, and provides a framework for statewide standardized wetland assessment.

The assessment area is evaluated based on two main parts, a qualitative and quantification description. For the quantification description, sites are evaluated in three categories and scored numerically on a scale from 0 to 10. The first category, Location and Landscape Support, examines the ecological context within which the system operates. The second examines the Water Environment, including hydrologic alteration and water quality impairment. The third focuses on Community Structure and more specifically, vegetation and structural habitat for areas with plant cover.

For some projects, off-site mitigation areas may be preferable to on-site mitigation areas. The applicant is encouraged to explore all mitigation options available on the project site and within the County, such as mitigation banks, offsite regional mitigation areas, and other areas that could utilize the UMAM to offset approved wetland impacts.

CHAPTER V - MISCELLANEOUS ACTIVITIES IN WETLANDS

5.1 Introduction

Pursuant to Section 1-11.09(1)(c), Rules of the EPC, Miscellaneous Activities in Wetlands (MAIW) are those activities that constitute development under Section 1-11.02(2)(b) yet are considered to have minor impact on wetland or other surface water functions. Applications for authorization of these types of impacts will be reviewed pursuant to Section 1-11.10, Rules of the EPC. Applicants do not need to demonstrate that the impact is necessary for reasonable use of a property but the impacts must be minimized to the greatest extent practicable and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impact possible. Mitigation pursuant to Section 1-11.08 is not necessary for activities that qualify but the approval may include conditions to offset adverse impacts, such as replanting to ensure erosion control or ensure the area is properly re-vegetated. Eligible MAIW impacts include but are not limited to the following activities:

5.2 Non-Construction Related Activities

The EPC Wetland Rule identifies development in wetlands or other surface waters as “any manmade change to real property, including but not limited to dredging, filling, grading, paving, excavating, clearing, timbering, ditching or draining.” Several types of development are characterized as non-construction related activities. The following non-construction related activities will be reviewed under MAIW eligibility. A site drawing must accompany the application for each of the following:

5.2.1 Nuisance Vegetation Control

The EPC encourages property owners to remove or control nuisance and exotic plant species from wetlands and other surface waters on their property. An application listing the proposed activities must be submitted for review and approval by the EPC staff. The application must list the plant species proposed for removal or control and the method to be used. Re-planting with native species may be required.

5.2.2 Swimming Access

A maximum 25 foot wide vegetation clearing zone may be maintained from the shoreline to open water for swimming access. This 25 foot area is considered the encumbered area of the shoreline and locating all facilities such as docks and boat ramps in this area is encouraged. If the facilities cannot be located in this area, the widths of any docks or boat ramps must be subtracted from the 25 foot encumbered area.

5.2.3 Mulched Paths

Mulched paths of no more than four feet wide and six inches deep may be allowed through wetlands. The paths must be located to avoid impacts to existing trees and to minimize impacts to existing native herbaceous wetland vegetation. Slope and path design shall be taken into consideration as part of the review.

5.2.4 Mowing

Wetland mowing may only be conducted in those areas dominated by nuisance herbaceous species and only in areas where the activity will not cause harm to native tree and shrub species. No mowing or cutting of vegetation growing in standing water or wet soils shall take place.

5.3 Construction Related Activities

The following MAIW eligible impacts are construction related activities and may be authorized in accordance with the guidelines described for each activity. A site drawing must accompany the application for each of the following. Fences, docks, boat ramps, rip-rap, and boardwalks located along floodways may require a Federal Emergency

Management Agency "No-Rise Study." Any activity subject to the regulatory authority of the Tampa Port Authority (TPA) shall not qualify for a MAIW authorization. These proposed activities will require a separate TPA permit.

5.3.1 Boat Ramps

Single family residential boat ramps deemed eligible under the MAIW provisions shall be limited to a width of no greater than 10 feet and shall also be minimized to the greatest extent practicable. The above water portion of the ramp must be located landward of the mean or ordinary high water line. Excavation shall be limited to that amount of material necessary to construct the ramp. The ramp must be situated on the property so as avoid impacts to trees and to cause the least environmental impact. The installation and maintenance of appropriate erosion controls will be required. The width of the ramp will be subtracted from the maximum 25 foot encumbered area allowed per property.

5.3.2 Fences

All proposals to construct fences within wetlands will be evaluated on a case-by-case basis. Fences shall be minimized to any extent practicable. Several types of fence, including hog wire, wrought iron slats, split rail, 3-5 strand wire, wood privacy and chain link fence with the bottom elevated off the substrate at least four inches may be considered appropriate for construction within wetlands and other surface waters. Fences shall not be constructed to confine livestock or other animals solely within the wetland and shall not unreasonably impede the movement of wildlife. Fences shall not block navigation, create a navigational hazard, or impede the natural flow of water by itself or through the accumulation of debris.

5.3.3 Elevated Boardwalks

Boardwalks shall be elevated above the surface water substrate at least three and a half feet and must be routed to avoid impacts to existing trees. Boardwalks approved under this section shall be limited to a width no greater than four feet for single family residences, five feet where the applicant requires ADA access, and six feet for commercial facilities. No excavation is permitted within the wetland or surface water except for the placement of the support posts. Temporary disturbance to wetland vegetation during installation is limited to an area of two feet on either side of the boardwalk.

5.3.4 Docks

Proposals to construct docks are reviewed under the same standards as elevated boardwalks referenced above and shall be reviewed under the following additional criteria and conditions: A dock review will entail a detailed assessment of existing wetland and aquatic vegetation at the proposed site. If the proposed location results in wetland impacts, the site shall be assessed for alternate locations which would minimize

wetland impacts. Construction of the structure shall attempt to avoid the removal of any trees and shall be located to minimize vegetation disturbance or removal. All proposed vessel mooring slips or areas, including boatlifts, boathouses, and davits, must be located so that a minimum of two feet of water depth exists under the slip area during Mean Low, Ordinary Low or Low Guidance Level elevation water conditions, whichever is appropriate. The structure's terminal platform must be located waterward of or beyond the vegetative littoral fringe. No part of the structure shall be enclosed by walls or doors. No dredging, filling, clearing or scouring shall be allowed except for the setting of pilings. During construction activities, the area of temporary disturbance to vegetation shall be limited to two feet on either side of the structure. No fish cleaning facilities, boat repair facilities or equipment, or fueling facilities on any structure shall be authorized through the MAIW. The structure shall be for recreational use only; with no more than one structure per single-family residence and shall be located within the applicant's area of submerged land ownership (within their property boundaries) or riparian limits. The applicant may construct a dock on property they do not own provided they obtain written authorization from the property owner.

5.3.5 Shoreline stabilization

The Hillsborough County Comprehensive Plan discourages hardening of shorelines in Hillsborough County. The EPC has adopted that policy and encourages property owners to plant native vegetation or use other environmentally beneficial methods to prevent shoreline erosion. No filling to obtain usable uplands shall be authorized under a MAIW authorization. Proposals to re-grade and re-plant areas of minor erosion may be reviewed under this section. The use of rip rap revetment may be permitted pursuant to this section for those areas that have demonstrated significant, ongoing shoreline erosion where natural shoreline stabilization is not feasible.

The construction of new seawalls will be considered only in residential man-made canal systems where existing functioning seawalls exist on both immediately adjacent properties and where any associated filling of wetlands or other surface waters is of nominal consequence and the new wall follows the contour of the existing shoreline. The applicant must also demonstrate the new seawall is necessary to prevent shoreline erosion.

Proposals for the repair of functional seawalls or similar structures within jurisdictional limits will be reviewed in accordance with the following criteria: the wall shall be located no greater than 18 inches waterward of the previous wall unless technical documentation is provided demonstrating additional space is required to repair the wall; and where no removal of non-nuisance vegetation or no additional filling of wetlands or other surface waters is necessary for the construction of the wall.

CHAPTER VI - ENGINEERING CRITERIA

The EPC Wetlands staff conducts engineering reviews of activities that may have an adverse effect on surface waters or ground waters of Hillsborough County. The purpose of these reviews is to protect wetland and aquifer hydrology and water quality.

The pre and post hydrology of projects associated with wetlands will be analyzed to ensure that adequate volumetric hydration in the post development condition will not be significantly altered from the existing conditions. The existing condition hydroperiod elevations for Seasonal High and Normal Pool of the wetlands will be analyzed to ensure they are maintained in the post development condition.

Any proposed lake, pond, sump or borrow pit excavation will be reviewed to determine if surface water and aquifer hydrology are adequately protected during construction and in the post development condition. The proposed activities shall not result in violations of surface or ground water quality standards adopted by the EPC in Chapter 1-5, Water Quality.

Rule History:

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