ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

BASIS OF REVIEW

For

AUTHORIZATION OF ACTIVITIES PURSUANT TO CHAPTER 1-11 - WETLANDS

- EPC Wetlands Division -

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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, parcel 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, but are not limited to, 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 Preservation 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 other 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 "Other Surface Waters (OSW)." 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 and other surface waters 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 the following factors may be considered:

a.) The current zoning of the parcel of property, at the time of submittal of the application, 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 impact is solely for the purpose of environmental restoration projects or solely for the purpose of conducting an environmentally beneficial project;
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 impact is 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

3.3.1 Adequate Protection: For purposes of Chapter 1-11, adequate protection shall be determined using the provisions available under Section 1-11.09(1). 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.

3.3.2 Cumulative Impacts: To supplement the criteria regarding cumulative impacts in Section 1-11.09(2), an applicant must provide reasonable assurance that a regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters within the same drainage basin as the regulated activity for which a permit is sought. A cumulative impact analysis approved by the Florida Department of Environmental Protection or the Southwest Florida Water Management District may be accepted by EPC in lieu of the criteria in this section if the wetlands to be impacted and their mitigation proposed to EPC are both equivalent to those addressed in the State's cumulative impact analysis. The impact on wetlands and other surface waters shall be reviewed by evaluating the following criteria:

(a) If an applicant proposes to mitigate these adverse impacts within the same drainage basin as the proposed impacts, and if the mitigation fully offsets these impacts, then EPC will consider the regulated activity to have no unacceptable cumulative impacts upon wetlands and other surface waters.

(b) If an applicant proposes to mitigate adverse impacts through mitigation physically located outside of the drainage basin where the impacts are proposed, an applicant may demonstrate that such mitigation fully offsets the adverse impacts within the impacted drainage basin (as measured from the impacted drainage basin), based on factors such as connectivity of waters, hydrology, habitat range of affected species, and water quality (generally referred to as "spill over"). If the mitigation fully offsets the impacts (as measured from the impacted drainage basin), and if the functions provided by the proposed out-of-basin-mitigation will "spill over" into the impacted basin, then the EPC will consider the regulated activity to have no unacceptable cumulative impacts upon wetlands and other surface waters.

(c) When adverse impacts to the functions of wetlands and other surface waters, as referenced in paragraphs (a) and (b) above, are not fully offset within the same drainage basin as the impacts, then an applicant must provide reasonable assurance that the proposed activity will not result in unacceptable cumulative impacts to the functions of wetlands and other surface waters, within the same drainage basin, when considered with the following activities:

i. Projects that have wetland impact authorization from the EPC or pending applications for wetland impact authorization from EPC.

ii. Activities that are under review, approved, or vested pursuant to Section 380.06, F.S., or other activities regulated under Part IV of Chapter 373, F.S. , which may reasonably be expected to be located within wetlands or other surface waters, in the same drainage basin, based upon the comprehensive plans, adopted pursuant to Chapter 163, F.S., of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations;

iii. Activities that have similar types of impacts (adverse effects) to those that will be caused by the proposed activity and for which those impacts are not fully offset within the drainage basin, shall be considered. Activities are considered to have similar impacts if they affect similar types of water resources and functions, regardless of whether the activities themselves are similar to one another; and

iv. The cumulative impact evaluation is conducted using an assumption that reasonably expected future applications with like impacts will be sought,

thus necessitating equitable distribution of acceptable impacts among future applications.

(d) Cumulative impacts are considered unacceptable when the proposed activity, considered in conjunction with the past, present, and future activities as described in section 3.3.2(c), above, would then result in significant adverse impacts to functions of wetlands or other surface waters within the same drainage basin when considering the basin as a whole. This analysis asks the question whether the proposed system, considered in conjunction with past, present, and future activities, would be the proverbial "straw that breaks the camel's back" regarding the above referenced wetland and other surface water functions in the basin.

(e) Applicants may propose measures such as preservation to prevent cumulative impacts. If unacceptable cumulative impacts are expected to occur, based on an evaluation described above, the applicant may propose additional mitigation measures.

(f) The Drainage Basin Map in Section 10.2.8-4 of the Florida Department of Environmental Protection Environmental Resource Permitting Applicant's Handbook, Volume I is adopted and incorporated herein.

3.3.3 Mitigation Bank Credits and Cumulative Impacts: Section 373.4136(6), Florida Statutes is adopted herein and may be used for mitigation purposes only. Cumulative impact criteria in Section 3.3.2 are satisfied if Section 373.4136(6), F.S. is utilized for mitigation.

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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 Uniform 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. Development authorized under Chapter V does not require a cumulative impact consideration described in Section 1-11.09(2), Rules of the EPC. Mitigation pursuant to Section 1-11.08 is not necessary for activities that qualify under Section 1-11.10, Rules of the EPC 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. A Wetland Impact Review pursuant to Section 1-11.07, Rules of the EPC, shall be required for all proposed activities which do not meet the specified criteria contained herein. The issuance of an MAIW authorization or qualifying for an exemption from an MAIW does not convey to the applicant or create in the applicant any property right or any interest in real property, nor does it authorize any entrance upon or activities on a property that is not owned or controlled by the applicant. 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 scaled 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 shall be required where necessary to ensure adequate erosion control and to encourage native re-vegetation.

5.2.2 Swim and Open Water Access

A maximum 25 foot wide vegetation clearing zone may be maintained from the shoreline to open water for swim access, open water access, and construction/location of facilities. Native tree species removal is prohibited under this section. The width of all facilities such as docks and boat ramps are considered a portion of the 25 foot wide access area. If the facilities cannot be located in this area, the widths of any docks or boat ramps must be subtracted from the 25 foot swim or open water access area, thus reducing the swim or open water access area width along the shoreline. To lessen adverse impacts to natural shoreline features it may be advisable to co-locate facilities. Vegetation clearing beyond the littoral fringe shall be limited to the minimum amount necessary to allow for watercraft to access the waterbody.

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.

5.2.5 Aquatic Plant Control

A. Introduction.

"Aquatic plant control" (formerly known as "Whole lake treatment") constitutes "clearing" of surface waters, including lakes and all other surface waters, under the definition of "development" as defined in Section 1-11.02(2)(b), Rules of the EPC. However, aquatic plant control conducted in open-water portions of the surface water and in accordance with this Section will qualify as an activity of nominal consequence to the surface water under Section 1-11.10(1)(b), Rules of the EPC. Aquatic plant control can include entire waterbody treatment or be limited to portions of a waterbody. Aquatic plant control does not include the activities concerning emergent vegetation such as shorelines and littoral areas which are regulated by Chapter 1-11, Rules of the EPC and Section 5.2.1 and Section 5.2.2, Basis of Review. Aquatic plant control activities are limited to removal or treatment of only submersed plants (i.e., those located underwater such as hydrilla, milfoils, and algae) and floating-leaf plants (e.g. water lettuce, hyacinth, and spatterdock) that exist in the open water portion of the waterbody. Disturbing, removing, or dredging of sediment is prohibited under this Section.

B. Aquatic Plant Control Noticed Exemption.

Aquatic plant control activities targeted to algae or non-native vegetation shall be exempt from Chapter 1-11 subject to the following conditions:

(1) Non-native vegetation are plants identified in the University of South

Florida Atlas of Florida Plants under the status as non-native. Algae treatment may include native and non-native species.

(2) In accordance with Ch. 1-11.11(1)(b), Rules of the EPC, thirty (30) calendar days after receipt of written notice of the proposed activity by the Wetlands Division by hand delivery or U.S. Mail or via EPC's online notification process, using the appropriate form, and upon no agency denial being issued, aquatic plant control of algae and non-native vegetation in surface waters shall be exempt provided the activity meets all conditions below and all conditions in Section 5.2.5(D) and (E), and the activity is reviewed and approved by other appropriate agencies as necessary.

(3) The written notice must include the following information:

(a) The area of treatment must be identified in a scaled site drawing;

(b) The type of removal implemented, i.e., hand, mechanical or herbicide;

(c) The species of targeted vegetation; and

(d) A list of Folio numbers for all properties proposed for treatment.

(4) After receipt of the written notice by EPC, and if no agency denial is issued regarding the notice, no additional written notice is required for the same activity in the same location for a period of three (3) years after receipt of the initial notice. A new notice exemption shall be submitted after three (3) years or if the activities change from the original notice exemption. Noticing potential users of the treated waterbody under this noticed exemption shall be done according to section 5.2.5. E.(2) prior to each treatment event within the three (3) year period.

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

(6) These exemptions do not apply to surface waters created, enhanced, or restored as mitigation for wetlands or surface water impacts under a permit issued by the Executive Director, Florida Department of Environmental Protection (DEP), Water Management District, or United States Army Corps of Engineers.

C. Aquatic Plant Control MAIW.

Aquatic plant control targeted to native vegetation may be authorized through an MAIW. The following conditions apply to all aquatic plant control activities approved under an MAIW permit:

(1) Applications and noticing under this Section shall include the following information:

(a) The area of treatment must be identified in a scaled site drawing;

(b) The type of removal implemented, i.e., hand, mechanical, or by herbicide;

(c) The species of targeted vegetation;

(d) A list of Folio numbers for all properties proposed for treatment.

(2) Any vegetation control will be limited to no more than forty (40) percent of the native vegetation within the treatment area within a three-year period.

(3) The applicant shall minimize vegetation control to the extent to preserve suitable native vegetation in the water body.

(4) Documentation that the applicant has notified in writing or obtained owner's authorization from all affected submerged lands owners and all adjacent uplands

property owners or, in the event the upland owners are not primary residents, then a copy shall be sent to the current residents of those properties. Alternatively, the applicant may provide notice by posting a sign in a conspicuous place upon the property which is the subject of the permit and at all public access points to the waterbody. The posted signs must be no smaller than a 30 inch by 48 inch sign and must be legible from the nearest public road. The notice shall be posted by the applicant at the applicant's expense no later than 15 calendar days after submittal of any application. Signage must remain on the property for at least 30 calendar days but must be removed by the applicant no later than 30 calendar days after the issuance or denial of the permit. The notice format shall be available by contacting the Wetlands staff, but at a minimum the notice must include the following: the location of the proposed site for permit or authorization; the type of permit or authorization requested; and how to obtain additional information from the staff regarding the proposed permit or authorization.

(5) In the event a submerged land property owner objects in writing to the proposed vegetation control on their specific property, that property shall be excluded from the treatment area. The property owner may object up until 20 days after they receive notice of the permit.

(6) At the applicant's expense, the applicant shall provide a copy of the permit and Notice of Rights ("Notice") to all submerged land property owners of the treatment area and all adjacent upland property owners to the treatment area ("affected property owners"). In the event the upland owners are not primary residents, then Notice shall be provided to the current residents of those properties. If the means of removal is via mechanical process or spot treatment, the applicant must only provide Notice to the property owners who are the submerged land property owners of the treatment area or who are the immediately adjacent upland residents to the treatment area.

(7) In all cases, the applicant shall submit documentation to the EPC that verifies the notices have been provided as described in paragraph (6).

(8) No activities authorized under this Section may occur until thirty (30) days after verified receipt of the documentation described above in paragraph (7). In the event an applicant can provide proof of receipt of the permit and Notice of Rights as described above, activities may occur twenty-one (21) days after the notices have been provided, and upon the permit becoming final.

(9) If the method of treatment is herbicide and there are no use restrictions on the herbicide label for treated waters, the requirements of Sections 5.2.5.C.(6), (7), and (8) do not apply when treatment is conducted by federal, state, or local governments. If the herbicide treatment includes use restrictions on the herbicide label for treated waters, the federal, state, or local government applicant shall provide notice to all affected property owners in accordance with two or more of the following methods: 1) hand deliver, U.S. mail, or e-mail a copy of the use restrictions to all affected property owners; 2) publish notice of the use restrictions and agency action in a newspaper of general circulation; or 3) publish notice of the use restrictions and agency action on the government applicant's website. The requirements of Sections 5.2.5.E.(2) and (3) are still applicable. Notice shall occur after the permit is issued but prior to the herbicide treatment and documentation of such notice shall be provided to EPC within 30 days of notice.

(10) Any person engaged in aquatic plant control must have a copy of the MAIW permit when conducting control activities.

D. Conditions Applicable to All Aquatic Plant Control.

(1) The applicant must be an owner of some portion of submerged lands within the waterbody or own property immediately adjacent to the waterbody. Persons authorized to represent multiple property owners such as, but not limited to, governmental agencies and officers of homeowners associations may submit an application on behalf of the property owners.

(2) Vegetation removed from the waterbody shall be properly disposed of in accordance with local, State, and federal law. Any vegetation materials removed shall be located to prevent the return of the materials back into the surface water or other wetlands.

(3) All non-targeted/unauthorized vegetation shall remain unaffected by the treatment. If non-targeted species are affected by the treatment beyond any minor incidental impacts, replanting of these species will be required.

(4) Aquatic plant control is prohibited in areas that serve as significant habitat, such as roosting or nesting areas, for State listed threatened or endangered species.

(5) Aquatic plant control shall include best management practices for turbidity and other pollution control to prevent violations of State or EPC water quality standards.

E. Management Activities and Treatment Noticing for Herbicide Treatment.

(1) If the method is herbicide control, any herbicides proposed for treatment shall be approved for use in aquatic systems by the Environmental Protection Agency (EPA) and must be applied in accordance with the label directions.

(2) Prior to undertaking herbicide control activities for exempt or non-exempt aquatic plant control, each permittee shall notify potential users of the treated waterbody, of any use restrictions on the herbicide label for treated waters. The permittee must post a sign on the permittee's property and at each common waterbody access points, identifying that herbicide is being applied and any water use restrictions to notify the public. In addition, permittee is encouraged to use one or more of the following methods of notice for posting herbicide treatment and any water-use restrictions to properly notify the affected public:

(a) The placement of notices at the management site.
(b) The establishment of a signal or marker system.
(c) Giving notice at established point of contact.
(d) Giving notice via e-mail or regular mail to all affected property owners.

(3) The notice shall include, at least, the types of water-use activities which will be temporarily prohibited, or restricted, and the dates for which these prohibitions, or restrictions, are applicable. The notice must remain posted during the period for which any use restrictions are in effect.

(4) The permittee is responsible for providing the authorized agent and/or herbicide treatment applicator a copy of the approved EPC Permit and conditions. The authorized agent and/or herbicide treatment applicator must be in possession of the EPC Permit at all times during performance of the work. The authorized agent and/or the applicator will also be subject to enforcement if unauthorized/non-targeted vegetation or other natural resources are impacted due to improper application of the herbicide treatment.

(5) If the EPC finds that immediate, serious danger to the public health, safety, welfare, or the environment requires emergency action, it is authorized to suspend,

restrict, or limit the scope of the permitted activity by emergency order.

5.2.6 Removal of Floating Tussocks

Tussocks are defined as floating mats of vegetation (herbaceous and non-herbaceous) that float freely in a waterbody and are not rooted in the substrate of the waterbody. Removal of floating tussocks composed of predominantly native vegetation may be permitted subject to the criteria below. Submittal of an MAIW application listing the plant species composing the floating tussock, the removal method, and how the vegetation material will be disposed of is required.

(1) The applicant must be an owner of some portion of submerged lands within the waterbody or own property immediately adjacent to the waterbody. Persons authorized to represent multiple property owners, such as, but not limited to, governmental agencies and officers of homeowners associations, may submit an application on behalf of the property owners.

(2) Tussocks may be removed pursuant to this rule if the removal is of nominal consequence to the affected wetlands/other surface water and the applicant demonstrates the tussock limits the public's access to or use of the surface water, hinders flood control, or impairs waterfront property owners' open water access.

(3) If the treatment method is herbicide control, any herbicides proposed for treatment shall be approved for use in aquatic systems by the Environmental Protection Agency (EPA) and must be applied in accordance with the label directions. The herbicide selected must be of the kind that adheres to the targeted vegetation.

(4) A tussock may be permitted for removal where there is no evidence of or observed active bird nesting of Florida listed species of special concern, threatened species, or endangered species.

(5) Disposal of removed vegetation must be placed within an acceptable upland area with the property owner's authorization and situated so as to prevent the return of these materials back into the wetland or other surface waters;

(6) Heavy machinery is prohibited in wetlands for the removal of floating tussocks.

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 scaled site drawing shall be required in each application. Fences, docks, boat ramps, rip-rap, and boardwalks located along floodways may require a Federal Emergency Management Agency "No-Rise Study." Pursuant to Section 1-11.07, Rules of the EPC, any activity in Tampa Port Authority d/b/a Port Tampa Bay (Port Tampa Bay) jurisdictional waters shall not require a separate MAIW authorization if 1) a permit is issued by Port Tampa Bay (with an associated EPC environmental review) incorporating all comments provided by EPC as specific or general conditions or 2) a permit is issued by the EPC pursuant to any Interlocal Agreement with Port Tampa Bay.

5.3.1 Boat Ramps

Boat ramps shall be limited to a single lane and must not exceed a boat ramp hardened surface width of 12 feet. The boat ramp hardened surface shall also be minimized to the

greatest extent practicable. The portion of boat ramp located immediately above the mean or ordinary high water line ("above water portion") and within the wetland limits shall be hardened with pervious or impervious material or otherwise stabilized to prevent turbidity. The hardened material used for the above water portion and below the mean or ordinary high water line must not include petroleum-based materials, such as asphalt, or materials which create leachate when in contact with water. The proposed boat ramp location shall have adequate water depth to avoid scouring, prop dredging, and other causes of turbidity and substrate damage. A minimum of two feet of water depth must exist at the toe of the boat ramp during Mean Low, Ordinary Low, or Low Guidance Level elevation water conditions, whichever is appropriate, as determined based on the best available information for the water body at the project location. The boat ramp surface below the mean or ordinary high water line shall not exceed 30 feet in length. The total hardened surface area above and below the mean or ordinary high water line shall not exceed 500 square feet within the wetland limits. Excavation and/or dredging shall be limited to that amount of material necessary to construct the ramp and avoid prop dredging at the toe of the ramp. The ramp must be situated on the property to avoid impacts to trees and to minimize 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 open water access area allowed per property.

5.3.2 Fences

Fences constructed in wetlands/other surface waters require a permit, unless they meet a State pre-emption (e.g. Section 604.50, F.S.). Impacts from fence installations shall be minimized to the greatest extent practicable. Fencing types appropriate for construction within wetlands and other surface waters are limited to hog wire, slatted fencing with a minimum spacing of 3.5 inches between slats, split rail, and horizontal wire fence. All fencing shall have the bottom elevated off the substrate to the ordinary high-water line. Horizontal wire fencing may be placed in the space between the substrate and ordinary high-water line, so long as the bottom is elevated off the substrate a minimum of four inches. 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 wetland/other surface water substrate at least three and a half feet. Within the first 20 feet waterward of the wetland line, the boardwalk may be sloped to meet the requirement that the boardwalk ultimately be elevated at least three and a half feet above the substrate. All attempts shall be made to route the boardwalk to avoid impacts to existing native tree species. 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. Handrails may overhang the boardwalk width by no more than one foot on each side. No excavation is permitted within the wetland or surface water except for the placement of the support posts/pilings. 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:

(1) A dock review shall require an assessment of existing wetland and aquatic vegetation at the proposed site. This review may also include an assessment of the benthic community at the proposed site where existing natural resources warrant such assessment.

(2) A structure shall be located to avoid impacts to native trees to the greatest extent practicable. A structure shall also be located to minimize other native vegetation disturbance or removal in accordance with Section 5.2.2 to the greatest extent practicable.

(3) A proposed dock shall be constructed in a manner which allows waterfront property owners open water access.

(4) All proposed vessel mooring slips or areas, including boatlifts 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. If the required depth is not present and alternative configurations and dredging cannot be accommodated, the applicant shall provide documentation which demonstrates the proposed mooring area shall have adequate water depth to avoid scouring, prop dredging, and other causes of turbidity and substrate damage.

(5) The bottom stringers of the proposed dock structure shall be constructed a minimum of one foot above Mean High or Ordinary High Water.

(6) The structure's terminal platform must be located waterward of or beyond the vegetative littoral fringe.

(a) Terminal platform is defined in this rule as the part of the structure that is connected to and located at the terminus of the access walkway and is for loading and unloading of vessels or used to conduct water dependent activities.

(b) The bends in an access walkway to avoid resources or as needed based on the site-specific conditions are excluded from the terminal platform requirements unless the portion of walkway is utilized for the mooring of a vessel or other water dependent activities as described above.

(c) The terminal platform shall be minimized to the greatest extent practicable, and shall be located, designed, and/or constructed so that it causes the least environmentally adverse impact.

(7) No part of the structure shall be enclosed by walls or doors. No fish cleaning facilities, boat repair facilities or equipment, or fueling facilities shall be authorized on any structure under this rule.

(8) 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.

(9) No more than one structure may be authorized per single-family residence on one parcel of land. The term "structure" as used within Section 5.3.4.(9), includes

docks, floating docks, piers, wharfs, marginal docks, observational platforms, and walkways. The following configurations are deemed one structure and must meet all rule criteria collectively: two unconnected access walkways utilized for a single vessel slip area; and a floating dock permanently attached to a piling supported dock. Two structures may be authorized if one of the following exceptions are met:

(a) the parcel of land is adjoining two or more discrete waterbodies where each structure is proposed;

(b) two or more existing structures are located on separate parcels which have been combined into one parcel whereas the square footage and footprint of such individual structures is not increased or modified;

(c) a second structure may be located on shorelines greater than 195 linear feet where the structures are at least 65 feet apart, where impacts to resources are minimized, and the total areas of all structures shall be less than 1,000 square feet. No more than two mooring areas total; or

(d) a second structure in Port Tampa Bay jurisdictional waters shall be of nominal consequence to the affected waterbody, located where no resources are impacted, and shall be less than 500 square feet. The second structure shall meet all applicable criteria of the Port Tampa Bay Submerged Lands Management Rules.

(10) Any structure must be located within the applicant's area of submerged land ownership (e.g. within their property boundaries), within the riparian limits for sovereignty land, or as case law allows. However, an applicant may construct a dock on property they do not own provided they obtain written authorization from the property owner or where public records do not identify any private owner of submerged lands.

(11) Any non-conforming structure may be replaced provided the footprint of the structure is not modified and the structure is still functional and substantially intact.

(12) Water dependent activity is defined in this rule as an activity which can only be conducted on, in, over, or adjacent to, water areas because the activity requires direct access to the water body for transportation, recreation, energy production or transmission, or source of water and where the use of the surface waters is an integral part of the activity.

5.3.4.1 Observation Platforms

Observation platforms shall meet all conditions in Sections 5.3.3 and 5.3.4, except as specified herein.

(1) Observation platforms shall not be used for the mooring of a vessel.

(2) Observation platforms shall have railings along the entire perimeter of the structure, shall be elevated above the surface water substrate at least five feet, and all attempts shall be made to route the boardwalk and platform to avoid impacts to existing native trees.

(3) Single-family residences shall be limited to one observational platform of no greater than 500 square feet of total area.

(4) Observation platforms for non-single-family residences shall have a cumulative area of no greater than 500 square feet of total area. This total area does not include the width of the boardwalk section. Multiple observation platforms may be proposed for non-single-family residences where each observation platform is proposed on two or more discrete waterbodies on the same parcel of land.

5.3.4.2 Marginal Structures

A marginal structure is defined as a structure that runs parallel along the waterbody shoreline or seawall more than 6 feet. Marginal structures shall meet all conditions in Section 5.3.4, as applicable, in addition to the following:

(1) A marginal structure shall not exceed 10 feet waterward from the seawall or shoreline under this section. If a proposed structure is greater than 10 feet waterward from the seawall or shoreline it is considered a walkway and shall meet the boardwalk width criteria in Section 5.3.3 above.

(2) If there is no existing 25-foot swim and open water access area, the marginal structure shall be located in the least vegetated area along the shoreline. This location along the shoreline shall be the designated swim and open water access area. If there is an existing 25-foot swim and open water access area, in accordance with Section 5.2.2, it is encouraged to co-locate facilities within the swim access area. If a proposed marginal structure cannot be located within the existing 25-foot swim and open water access area, an area equivalent to the width of the proposed marginal structure, within the existing swim and open water access area, shall be allowed to naturally revegetate.

(3) A marginal structure located within Port Tampa Bay jurisdictional waters or any other artificially created residential canals where there is no vegetation and/or no significant benthic resources present within the project area due to water depths, is not subject to the conditions regarding length out and location within the swim and open water access as described in 5.3.4.2 (1) and (2).

(4) The marginal structure shall be minimized to the greatest extent practicable, and the marginal structure shall be located, designed, and/or constructed so that it causes the least environmentally adverse impact.

(5) Marginal structures and associated facilities shall not be located within a riparian mangrove fringe.

5.3.5 Shoreline stabilization

The EPC encourages property owners to plant native vegetation or use other environmentally beneficial methods to prevent shoreline erosion. All applications for shoreline stabilization measures prohibit the filling of wetlands and other surface waters to obtain usable uplands. During construction, all shoreline stabilization activities shall utilize erosion/turbidity control best management practices. Shoreline stabilization activities shall not cause unauthorized fill in wetlands or other surface waters, including but not limited to failed breakwaters, seawalls, or rip rap. Multiple shoreline stabilization activities are allowed on one property.

(1) **Living Shorelines.**

(a) **Natural Shoreline.** Proposals to re-grade and re-plant areas of minor erosion with native vegetation are reviewed under this section and shall meet the following conditions:

(i) Only native, non-nuisance, vegetation may be planted. All vegetation must be identified by species and elevation in the project drawings.

(ii) At a minimum, plants shall be spaced on two (2) foot centers.

(iii) The applicant is responsible for removing non-native, nuisance vegetation from the natural shoreline project area.

(iv) Re-grading shall be limited to the amount necessary to correct the erosion and provide an adequate slope for plant recruitment and vegetation.

(v) Biodegradable natural fiber logs or mats, that are secured in place, such as with the use of wooden stakes, may be used if necessary to support the vegetative plantings.

(b) **Hybrid Shoreline.** Proposals for the protection and stability of shorelines that incorporate vegetation and/or biological components in combination with harder structures (breakwaters, sills, geoweb and similar structures) necessary to reduce wave energy are reviewed under this section. Hybrid Shorelines shall meet all conditions in Section 5.3.5(1)(a), as applicable, in addition to the following, as applicable:

(i) **Clean fill.** Clean fill placed within the planting zone shall be limited to the minimum extent necessary to support the vegetative plantings and the slope shall be no steeper than two horizontal to one vertical.

(ii) **Breakwater.** A breakwater may be installed concurrent with the planting if permanent wave attenuation is required to maintain the shoreline vegetation, provided:

a. For the purposes of this section, a breakwater is defined as a barrier built into a body of water, waterward of the Mean or Ordinary High Water Elevation, to protect the shoreline and littoral zone from the force of waves;

b. The breakwater is located as close to the planting area as necessary to provide protection for the plantings;

c. The breakwater top height shall be at least six inches more than the Mean or Ordinary High Water elevation. At a minimum, the breakwater shall be marked with a two-inch diameter stake(s) which extends one foot above Mean High Water elevation and has reflective marking, unless determined that a navigational marker is not needed;

d. The breakwater is composed predominantly of natural oyster shell cultch (clean and fossilized oyster shell) or other stable, nondegradable materials such as oyster reef, reef balls, boulders, clean concrete rubble, rip rap, rock sills, or triangular concrete forms, as appropriate for the project location. Oyster shell cultch, if used, shall be enclosed in mesh bags having openings of no more than three inches, or securely fixed to matting prior to placement in the water. Oyster bags and mats must be anchored to prevent movement of shell from the project area;

e. If the breakwater consists of natural boulders or clean concrete rubble it shall be a minimum of one foot in diameter, and contain no reinforcing rods or other similar protrusions;

f. The breakwater shall not be placed over, or within three feet (in any direction) of any existing submerged or emergent native vegetation; and

g. The breakwater shall be placed in units so that there is at least one opening measuring at least five feet in width located every 75 linear feet along the breakwater, with a minimum of one opening, to allow the flow of water and the passage of fish and aquatic wildlife.

(iii) **Soil confinement technology.** Soil confinement technology that allows for vegetation growth (e.g. geofabric or geoweb) or similar material used for the stabilization of the slope and facilitates the planting of native plants within the littoral shelf shall meet the following design specifications:

a. Any soil confinement technology shall not extend more than two feet from the waterward most plantings or the minimum extent necessary to facilitate the planting of vegetation;

b. Any soil confinement technology shall extend to or landward of the Mean or Ordinary High Water line;

c. Any soil confinement technology shall not include petroleum-based materials, such as asphalt, or materials which create leachate when in contact with water; and

d. The soil confinement technology shall not be placed on a slope steeper than two horizontal to one vertical along the shoreline. Alternatively, if necessary for site conditions, terraced construction consisting of horizontal ridges in a stepped design may be allowed.

(iv) **Sill.** A sill may be utilized for permanent wave attenuation to maintain the wetland shoreline vegetation, provided:

a. Concurrent native wetland vegetation is planted immediately landward of the sill;

b. The sill shall be constructed parallel to the shoreline;

c. The sill shall be composed of materials that are consistent with Section 5.3.5(1)(b)(ii)(d);

d. The sill shall be located immediately adjacent on the waterward side of the wetland vegetation/littoral area; and

e. The sill shall be constructed below Mean or Ordinary High Water as appropriate to allow hydration of the wetland area landward of the sill structure.

(c) This section does not authorize beach creation, renourishment, or land reclamation activities.

(d) The placement of these activities shall be of nominal consequence to the existing submerged and/or emergent native vegetation.

(e) The living shoreline must be properly maintained in the permitted footprint, which may require periodic repair or replacement of hardened structures including but not limited to sills, breakwaters, oyster bags, or clean fill after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline.

(f) An application fee reduction of 50% applies to Living Shorelines (also known as Native Based Solutions), see Chapter 1-6, Rules of the EPC. This fee reduction is solely for Living Shorelines and if this activity is paired with another activity, the higher fee shall apply.

(2) **Rip Rap Installation.** The use of rip rap revetment may be permitted pursuant to this section for those natural areas that have demonstrated significant, ongoing shoreline erosion where natural shoreline stabilization is not feasible or with already hardened shorelines. An application to install rip rap revetment must meet the following conditions:

(a) Filter fabric shall be installed prior to the placement of rip rap materials along natural shorelines.

(b) The rip rap shall consist only of natural boulders or clean concrete rubble one to three feet in diameter on average, and there are no reinforcing rods or other similar protrusions in the concrete rubble.

(c) The slope of the rip rap shall be no steeper than two horizontal to one vertical from the surface water or face of the hardened shoreline.

(d) Rip rap shall extend waterward no further than necessary for shoreline stabilization or ecological benefit.

(3) **Seawalls.**

(a) An application for the construction of new seawalls under this section requires a demonstration of shoreline erosion that cannot be corrected by means of native vegetation or the use of rip rap, or is required to maintain the integrity of an upland structure(s). A new seawall shall be limited to residential manmade canal systems where existing functioning seawalls exist on both immediately adjacent properties. Any associated filling of wetlands or other surface waters shall be of nominal consequence and the new wall shall follow the contour of the existing shoreline while avoiding native trees.

(b) Proposals for the repair or replacement of seawalls or similar structures within jurisdictional limits, which do not meet the exemption criteria contained in Section 5.4(B)(17), will be reviewed in accordance with the following criteria:

(i) the face of the replacement 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;

(ii) backfilling or regrading shall be limited to only the minimum amount necessary to level the land immediately behind the replacement seawall. If wetlands or other surface waters have developed immediately landward of the seawall or similar structure, no more than 500 square feet of wetland or other surface water area shall be filled;

(iii) the substrate disturbance shall be limited to the minimum necessary for the installation of the replacement seawall; and

(iv) the removal of vegetation, including native trees, shall be limited to the minimum amount necessary and shall be of nominal consequence to the wetlands and other surface waters.

5.4 Exempt Activities

A. The activities meeting the limitations and restrictions below are exempt from EPC Wetlands permitting. However, if located in, on, or over Port Tampa Bay jurisdictional submerged lands, they may be subject to a separate authorization under the chapter 95-488, Laws of Florida and pursuant to any existing Interlocal Agreement, as applicable. These exemptions do not imply exemption from obtaining all proper permits from other governmental agencies.

B. Activities exempt from permitting:

(1) Re-decking of any existing structure.

(2) Installation of two sister pilings on any existing structures.

(3) Replacement of a previously permitted dock, boardwalk, marginal structure, observation platform in the same configuration including the re-decking, replacement of pilings, hardware, and the new installation of new permittable activity within the existing permitted footprint (e.g., new roof over existing decking). If the total area of the structure exceeds 1000 square feet, this exemption does not apply.

(4) Re-nourishment and/or maintenance of previously permitted rip rap and permitted Living Shorelines pursuant to Section 5.3.5(1), provided that it does not extend beyond its previously permitted dimensions.

(5) Installation or replacement of boatlift within an existing slip. The boatlift location must have adequate depth as noted in 5.3.4(4).

(6) Native plantings in wetlands and other surface waters that does not involve vegetation removal or re-grading of the wetland or other surface water.

(a) Plantings are Florida native wetland plants appropriate for the site obtained from commercially-grown stock; and

(b) Biodegradable natural fiber logs or mats that are secured in place, e.g. with the wooden stakes, may be used if necessary to support the vegetative plantings.

(7) Maintenance activities of unpermitted "grandfathered" structures, provided the structure is still functional and substantially intact. Grandfathered structure are those structures constructed on or before May 14, 1985.

(8) Removal of docks, boardwalks, observation platforms, and marginal structures. Removal of a structure may affect grandfathering status.

(9) The repair of existing public concrete bridge pilings through the construction of pile jackets provided the work is conducted in accordance with the piling exemption in Section 62-330.051, F.A.C.

(10) Removal of derelict vessels as defined in section 823.11(1), F.S., by federal, State, and local agencies, provided:

(a) The derelict vessel case has been completed as specified in section 705.103, F.S., and has been entered into the Statewide Derelict Vessel Database maintained by the Florida Fish and Wildlife Conservation Commission;

(b) All work is done in a manner that, to the greatest extent practicable, avoids additional dredging or filling, grounding or dragging of vessels, and damage to submerged resources such as seagrass beds, oyster beds, coral communities, mangroves, other wetlands, and live bottom; and

(c) An absorbent blanket or boom shall be immediately deployed on the surface of the water around the derelict vessel if fuel, oil, or other free-floating pollutants are observed during the work.

(11) Construction, alteration, maintenance, operation, and removal of freshwater fish attractors by the Florida Fish and Wildlife Conservation Commission, U.S. Forest Service, and county and municipal governments, provided:

(a) The material is limited to clean concrete, rock, brush, logs, or trees;

(b) The material is firmly anchored to the bottom of the waterbody;

(c) The size of an individual fish attractor shall be limited to one quarter of an acre in area;

(d) The top of the fish attractor shall be at least three feet below the water surface at expected average low water depth, as determined based on best available information for the waterbody at the specific location of the attractor;

(e) The attractor shall be outside any posted navigational channels and shall not cause a navigational hazard;

(f) No material is placed on or in areas vegetated by native aquatic vegetation; and

(g) The provisions of paragraph 62-330.050(9)(c), F.A.C., also shall apply to protect listed species during the work.

(12) The installation of aids to navigation, including bridge fender piles, "No Wake" and similar regulatory signs, and buoys associated with such aids if marked and authorized by the Florida Fish and Wildlife Conservation Commission in accordance with section 327.40, F.S.

(13) Repair and replacement of pipes or culverts provided:

(a) The pipes or culverts do not exceed the original footprint of the existing pipe or culvert;

(b) The invert elevation shall not be changed;

(c) The pipes or culverts function to discharge or convey stormwater, and are not associated with the repair, replacement, or alteration of a dam, spillway, or appurtenant works; and

(d) This exemption does not imply exemption from obtaining all proper permits from other governmental agencies.

(14) Collection of seagrass, macroalgae, and macrobenthos in accordance with the terms and conditions of a permit or license issued by the Florida Fish and Wildlife Conservation Commission.

(15) Construction, operation, maintenance, and removal of scientific sampling, measurement, and monitoring devices, provided:

(a) the device's purpose is solely to collect scientific or technical data, such as staff gages, tide and current gages, meteorological stations, water recording, biological observation and sampling, and water quality testing and improvement. Parshall flumes and other small weirs installed primarily to record water quantity and velocity are authorized, provided the amount of fill is limited to 25 cubic yards;

(b) the device and any associated structures or fill, such as foundations, anchors, buoys, and lines, is removed to the maximum extent practicable at the end of the data collection or sampling;

(c) the site is restored to pre-construction conditions within 48 hours of completion of use of the device; and

(d) all work is conducted in compliance with subsection 62-330.050(9), F.A.C.

(16) Geotechnical, geophysical, and cultural resource data surveying, mapping, sounding, sampling, and coring associated with beach restoration and nourishment projects and inlet management activities as provided in section 403.813(1)(v), F.S.

(17) The repair or replacement of functional seawalls or similar structures within jurisdictional limits will be reviewed in accordance with the following criteria:

(a) the face of the replacement wall shall be located no greater than 18 inches waterward from the face of the previous wall;

(b) where no removal of non-nuisance trees or no additional filling or dredging of wetlands or other surface waters is necessary for the construction of the wall; and

(c) where wetlands have not developed immediately landward of the seawall or similar structure.

(18) Seawall cap replacement provided the following conditions are met:

(a) limited to flush standard seawall caps with a 6"-8" overhang;

(b) not applicable to cantilever or encapsulating seawall caps; and

(c) not intended for expanded walkway seawall caps.

(19) Installation and repair of water intake lawn irrigation waterlines and closed-loop air conditioning cooling lines laid on the bottoms of waters for an individual private single-family or multi-family residence, provided that the intake diameter is less than six inches, or its hydraulic equivalent.

(20) Maintenance dredging conducted by Port Tampa Bay, provided the work is conducted in accordance with the maintenance dredging exemption in Section 62-330.051, F.A.C.

(21) Removal of floating tussocks in accordance with the following criteria:

(a) composed of predominantly (over 50%) non-native vegetation;

(b) where there is no evidence of or observed active bird nesting of Florida listed species of special concern, threatened species, or endangered species;

(c) disposal of removed vegetation is placed within an acceptable upland area with the property owner's authorization and situated to prevent the return of these materials back into the wetland or other surface waters;

(d) heavy machinery is prohibited in wetlands for the removal of floating tussocks;

(e) floating tussocks composed of predominantly native vegetation are not exempt and require authorization, including but not limited to a Miscellaneous Activities in Wetlands authorization;

(f) if the method of treatment is herbicide control, any herbicides proposed for treatment shall be approved for use in aquatic systems by the Environmental Protection Agency (EPA) and must be applied in accordance with the label directions. The herbicide selected must be of the kind that adheres to the targeted vegetation; and

(g) tussocks are defined as floating mats of vegetation that float freely in a waterbody and are not rooted in the substrate of the waterbody.

(22) Geotechnical investigations, including soil test borings, standard penetration tests, and other work involving boring, auguring, or drilling for the purposes of collecting geotechnical data in accordance with the following criteria:

(a) Excavation at each soil boring, auguring, or coring location is limited to no more than one foot in diameter;

(b) No drilling fluid or dredged material shall be left above grade in a wetland or other surface water;

(c) Boreholes suspected to have penetrated a confining layer shall be

grouted from the bottom up by means of a tremie pipe and the severed materials shall be removed from the wetland or other surface waters;

(d) Turbidity, sedimentation, and erosion shall be controlled during and after investigations to prevent violations of state water quality standards due to construction related activities;

(e) Mats comprised of wooden, composite, metal, or other non-earthen construction materials may be used to provide temporary access to the site to maintain or repair structures, as identified above. Mats shall be removed as soon as practicable but no longer than seven days after the passage of equipment or the completion of the work at each location along the alignment of the project; and

(f) The following are additional criteria applicable to temporary access and staging areas:

(i) No cutting or clearing of native wetland trees having a diameter four inches or greater at breast height;

(ii) The maximum width of the construction access area shall be 15 feet. Areas disturbed for access shall be restored to natural grades within 48 hours after the geotechnical investigation is complete and be allowed to naturally revegetate; and

(iii) Temporary matting and temporary access areas under this exemption shall not be placed in mangroves.

(23) Preservation, restoration, repair, removal, or replacement of the following: an existing communication or utility pole, aerial transmission or distribution lines (less than 230 kV), or the bases and anchoring devices to support utility poles. The exempt activity must be in accordance with the following criteria:

(a) This exemption is limited to single pole structures;

(b) No dredging or filling in wetlands or other surface waters except to remove poles, bases, or anchoring devices and replace them with new ones;

(c) "Anchoring device" shall mean guy wires fastened to the ground, without the need for dredging in wetlands, and "base" shall mean a foundation not exceeding four feet in radius, used to support a utility pole;

(d) The activity must not relocate existing poles or lines more than 10 feet in any direction from their original location;

(e) Mats comprised of wooden, composite, metal, or other non-earthen construction materials may be used to provide temporary access to the site to maintain or repair structures, as identified above. Mats shall be removed as soon as practicable but no longer than seven days after the passage of equipment or the completion of the work at each location along the alignment of the project;

(f) The following are additional criteria applicable to temporary access and staging areas:

(i) No cutting or clearing of native wetland trees having a diameter four inches or greater at breast height;

(ii) The maximum width of the construction access area shall be 15 feet. Areas disturbed for access shall be restored to natural grades within 48 hours after the electrical facilities work is complete and be allowed to naturally revegetate; and

(iii) Temporary matting and temporary access areas under this exemption shall not be placed in mangroves.

(g) Notwithstanding the above, activities certified under the Power Plant Siting Act or Transmission Line Siting Act pursuant to sections 403.501 – 403.518, F.S. and sections 403.52 – 403.4365, F.S. respectively, are exempt from regulation under this rule.

C. Conditions applicable to all exemptions:

(1) Structures are not used for storage of materials other than those associated with water dependent recreational use.

(2) All work is done in a manner that avoids scouring, dredging or filling, grounding or dragging of vessels and damage to resources.

(3) No dredging, filling, clearing or scouring shall be allowed except for the installation of pilings.

(4) Construction materials, debris, or other trash will not be allowed to escape into the water, at any time during or after construction. Such materials are to be disposed of in an approved manner, i.e., upland disposal facility, appropriate trash receptacles, etc.

(5) This exemption does not convey to the party or create any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the party, or convey any rights or privileges other than those specified in this exempt activity and Chapter 1-11 or other applicable rules.

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

(7) 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.

(8) These activities shall not cause offsite adverse impacts, including flooding, or otherwise affect the local hydrology so as to adversely affect other wetlands.

(9) These exemptions do not provide EPC approval for any other EPC permitting program. In addition, exempt activities pursuant to this rule does not imply exemption from obtaining all proper permits from other governmental agencies.

Chapter V History: ***Adopted and effective: July 17, 2008 pursuant to Section 1-11.06, Rules of the EPC; Amendment adopted: May 20, 2021; Amendment effective: May 25, 2021; Amendment adopted: May 19, 2022; Amendment effective: May 20, 2022; Amendment adopted: August 15, 2024; Amendment effective: August 19, 2024***

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 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:
Adopted: July 17, 2008
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