

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
AUGUST 16, 2007
9 AM**

AGENDA SUPPLEMENT

The EPC Agenda Item IV (Wetlands Public Hearing) is supplemented with the attachments listed below:

- | | |
|--|----|
| 1. Proposed changes to Chapter 1-11, Rules of the EPC for the Hybrid Proposal | 2 |
| 2. Proposed changes to Chapter 1-11, Rules of the EPC for the Elimination Proposal | 5 |
| 3. Proposed changes to Chapter 1-14, Rules of the EPC for the Elimination Proposal | 11 |
| 4. Final Hybrid Proposal | 21 |

Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

Visit our website at www.epchc.org

- Rule Draft -

August 13, 2007 language

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

**CHAPTER 1-11
WETLANDS**

1-11.09 ADEQUATE PROTECTION

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

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

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

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

(d-) Where the adverse impact is offset by the benefit of the development to the public, such that it is clearly in the public interest and

an acceptable mitigation plan is proposed. Examples may include, in appropriate circumstances, the construction of public roads or other public works; or

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

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

Section History – adopted May 14, 1985; amended July 22, 2004; amended _____, 2007;
Effective date: __, 2007.

**1-11.10 MISCELLANEOUS ACTIVITIES
IN WETLANDS**

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

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

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

(c) Other miscellaneous activities in wetlands as provided in section 1-11.09(1)(c) that are not exempt under section 1-11.11. These activities include but are not limited to construction of boardwalks, docks, pilings, rip rap, aids to navigation, boat lifts, outfall structure placements; herbaceous vegetation

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

removal for minor swim access areas not to exceed 25 feet of shoreline, boat ramps for single family residences, and other similar structures or activities.

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

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

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

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

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

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

Section History – adopted _____, 2007;
Effective date: ____, 2007.

1-11.11 EXEMPTIONS

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

(a) Standard Exemptions.

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

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

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

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

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

(i) Development within artificially

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

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

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

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

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

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

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

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

(e) The development under these

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

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

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

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

Section History – adopted _____, 2007;
Effective date: _____

- Draft Rule -

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

**CHAPTER 1-11
WETLANDS RECOVERY AREAS**

PART I

- ~~1-11.01~~ Intent
- ~~1-11.02~~ Definitions
- ~~1-11.03~~ Identification of Wetlands
- ~~1-11.04~~ Wetland Delineations
- ~~1-11.05~~ Pollution Prohibited
- ~~1-11.06~~ Review of Proposed
Development Within Wetlands
(Repealed and transferred in
part)
- ~~1-11.07~~ Environmental Protection
Commission Authorization
- ~~1-11.08~~ Minimum Requirements of a
Mitigation Plan
- ~~1-11.09~~ Adequate Protection

- PART II (Wetland Recovery Area)**
- ~~1-11.20~~ Designation of Recovery Areas
 - ~~1-11.21~~ Delineation of the Recovery
Areas
 - ~~1-11.22~~ Management Plans
 - ~~1-11.23~~ Monitoring and Evaluation
 - ~~1-11.24~~ Termination of Recovery Area
Restrictions

PART I

~~1-11.01~~ **INTENT**

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

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

~~2. Marine wetlands are particularly valuable resources to the residents of the county, providing protection to water quality in the bay, prevention of erosion and siltation, and natural habitat for aquatic life upon which the local economy is dependent. Their importance to the ecological system and values of the Tampa Bay region requires that they be protected from the adverse impacts of human activities. The Commission will use available resources and~~

media to provide information to the public, especially boaters and swimmers, regarding the nature, value and fragility of marine wetlands, and so to enlist their assistance in avoiding such adverse impacts as much as possible.

~~Section History — amended July 22, 2004~~

~~1-11.02 — DEFINITIONS~~

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

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

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

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

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

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

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

~~g. **Waters of the County** — waters, both surface and under ground, which are located either entirely or partially within the geographic boundaries of Hillsborough County, and also the physical features which regularly or seasonally contain water by inundation or saturation of surface or groundwater in years of normal water conditions. Waters of Hillsborough County include but are not limited to the water and containing physical features of~~

~~bays, rivers, streams, lakes, ponds, swamps, springs, impoundments and other waters whether naturally or artificially created and whether fresh, brackish, saline or tidal.~~

~~h. **Wetlands** — areas as defined by section 373.019(17), F.S. included within waters of the County which are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps, seagrass beds, and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.~~

~~Section History — amended July 22, 2004~~

~~1-11.03 IDENTIFICATION OF WETLANDS~~

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

~~Section History — amended June 28, 1994~~

~~1-11.04 DELINEATION OF WETLANDS~~

~~1. Sections 62-340.300, 62-340.400, 62-340.450, 62-340.500, 62-340.550, and 62-340.600 F.A.C. providing the statewide method as amended by the Legislature for delineating wetlands in Florida, are adopted by reference. Qualified developments granted vested or~~

~~grandfathered rights pursuant to Section 373.421(7) F.S. shall be delineated as provided therein.~~

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

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

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

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

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

~~Section History amended December 18, 1997~~

1-11.05 POLLUTION PROHIBITED

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

~~Executive Director or his authorized agent.~~

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

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

~~Section History amended December 18, 1997~~

1-11.06 REVIEW OF PROPOSED DEVELOPMENT WITHIN WETLANDS

~~Section History repealed and transferred in part July 22, 2004~~

1-11.07 ENVIRONMENTAL PROTECTION COMMISSION AUTHORIZATION

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

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

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

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

Development pursuant to such authorization shall be periodically inspected to ensure compliance with the conditions imposed. Failure to comply with any condition, including conditions contained in a Tampa Port Authority permit, shall be a violation of this rule subject to administrative and judicial enforcement and penalties under Chapter 84.446, Laws of Florida.

Section History amended December 18, 1997

~~1-11.08 MINIMUM REQUIREMENTS OF A MITIGATION PLAN~~

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

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

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

~~reasonable use of the property, or to determine the appropriateness of the type of mitigation proposed.~~

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

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

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

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

~~_____ b. a schedule to remove exotic or nuisance vegetation;~~

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

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

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

~~f. all upland areas preserved for purposes of mitigation, regardless of their size, shall be permanently preserved through a conservation easement as defined in section 704.06, F.S., and~~

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

~~7. An applicant for wetland impacts may also obtain mitigation for wetland impacts by purchasing mitigation credits from a fully permitted wetland mitigation bank or through the use of an offsite regional mitigation area. The Commission may also award and deduct mitigation bank credits from a mitigation bank pursuant to the standards in this rule. All reasonable attempts shall be made to locate this mitigation effort within the geographic boundaries of Hillsborough County.~~
~~Section History -- amended July 22, 2004~~

1-11.09 ADEQUATE PROTECTION

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

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

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

~~c. Where the adverse impact is completely confined to such a small area as to be of nominal consequence to the wetland system, such as may occur with docks or boardwalks on pilings;~~

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

~~e. Where adverse impact can be prevented by appropriate precautions, such as control of the quantity and quality of stormwater~~

~~run off into wetland systems.~~

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

~~Section History -- amended July 22, 2004~~

PART H (Wetland Recovery Areas)

~~Part History - Adopted June 16, 1992~~

~~Amended December 18, 1997~~

~~Amended~~

1-11.20 DESIGNATION OF RECOVERY AREAS

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

1-11.21 DELINEATION OF THE RECOVERY AREAS

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

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

1-11.22 MANAGEMENT PLANS

Management Plans will be developed by the Executive Director and adopted by the Commission at an advertised public hearing and will be kept on file. A Management Plan may include:

1. Prohibitions or limitations of specific uses or activities; types of equipment, vehicles, or vessels; type or quantity of development, or times of use. Such limitations must be tailored to avoid or prevent further damage, but they

should not needlessly restrict non-damaging uses. Prohibitions or limitations are appropriate when the unrestricted activity would, in reasonable scientific judgment, adversely effect or impair:

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

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

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

1-11.23 MONITORING AND EVALUATION

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

Percent of vegetative cover over an identified area;

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

Water clarity for submerged systems and water quality.

1-11.24 TERMINATION OF RECOVERY AREA RESTRICTIONS

Upon determining that optimum recovery of the damaged wetlands has occurred and that further restrictions are unnecessary, the Commission may rescind the restrictions placed on the Recovery Area by a public announcement, reserving the right to reinstate restrictions if necessary for the protection of the wetlands.

Rule History:

Adopted 5/14/85

Amended 9/24/90

Amended 11/14/90

Part II Added 6/16/92

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

Parts I and III Amended 6/22/94

Amended 12/18/97

Amended referenced Sections 7/22/04

Part I repealed, Part II renamed Part I and amended X/X/XXXX

- Draft Rule Repeal -

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

CHAPTER 1-14

**MANGROVE TRIMMING AND
PRESERVATION**

Repealed – August 16, 2007

- ~~1-14.01 Findings~~
- ~~1-14.02 Intent~~
- ~~1-14.03 Authority~~
- ~~1-14.04 Definitions~~
- ~~1-14.05 Exemptions~~
- ~~1-14.06 Trimming of mangroves; permit requirement~~
- ~~1-14.07 Other trimming and alteration of mangroves; permit Requirement~~
- ~~1-14.08 Professional mangrove trimmers~~
- ~~1-14.09 Enforcement~~
- ~~1-14.10 Fees~~
- ~~1-14.11 Administration~~

~~1-14.01 FINDINGS~~

~~(a) The Environmental Protection Commission of Hillsborough County (Commission) finds that there are over 555,000 acres of mangroves now existing in Florida. Of this total, over 80 percent are under some form of government or private ownership or control and are expressly set aside for preservation or conservation purposes.~~

~~(b) The Commission finds that mangroves play an important ecological role as habitat for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; as shoreline stabilization and storm protection; and for water quality protection and maintenance; and as food web support. The mangrove forest is a tropical ecosystem that provides nursery support to the sports and~~

~~commercial fisheries. Through a combination of functions, mangroves contribute to the economies of many coastal counties in the state, including Hillsborough County, which has as an economy strongly dependent on tourism and a variety of marine related industries, most of which are closely correlated to a healthy natural environment and strong fisheries. In addition, Hillsborough County's coastal environment and natural resources are a strong attractant for both businesses and residents.~~

~~(c) The Commission finds that since 1950, approximately half of the Tampa Bay area's natural shoreline has been adversely impacted, with some areas of Hillsborough County having lost almost half of their mangroves in that same time frame.~~

~~(d) The Commission finds that both the City of Tampa and the Hillsborough County Comprehensive Plans designate mangrove swamps as preservation areas in Hillsborough County. In addition, the Tampa Bay National Estuary Program's Comprehensive Conservation and Management Plan for Tampa Bay ("Charting the Course") supports the protection, conservation and restoration of marine resources and habitats, including mangroves.~~

~~(e) The Commission finds that the trimming and alteration of mangroves can affect their productivity and habitat value.~~

~~(f) The Commission finds that the trimming of mangroves by professional mangrove trimmers following the criteria in these rules has a potential to maintain the beneficial attributes of mangrove resources and that professional mangrove trimmers should be authorized to conduct mangrove trimming, as contained herein.~~

~~Section History Adopted 01/12/2006
Effective date: 10/19/2006~~

~~1-14.02 INTENT~~

~~(a) It is the intent of the Commission to protect and preserve mangrove resources valuable to our environment and economy from~~

~~unregulated removal, defoliation, and destruction.~~

~~(b) It is the intent of the Commission that no trimming or alteration of mangroves may be permitted on uninhabited islands which are publicly owned or on lands set aside for mitigation or on certain lands set aside for conservation and preservation, except where necessary to protect the public health, safety, and welfare, or to enhance public use of, or access to, these areas in accordance with management plans approved by the State, County or Municipality.~~

~~(c) It is the intent of the Commission to acknowledge waterfront property owners their riparian rights as recognized by section 253.141, Florida Statutes (F.S.) and any other provision of law.~~

~~(d) It is the intent of the Commission to also allow mangrove trimming at waterfront properties with mangroves where such trimming can be done consistent with the specific criteria of the Commission.~~

~~(e) It is the intent of the Commission to encourage waterfront property owners to voluntarily preserve mangroves, encourage mangrove growth, and plant mangroves along their shorelines.~~

~~(f) It is the intent of the Commission that all trimming of mangroves pursuant to this rule on parcels having multifamily residential units be conducted so as to result in an equitable distribution of the riparian rights.~~

~~Section History Adopted 01/12/2006
Effective date: 10/19/2006~~

1-14.03 — AUTHORITY

~~(a) The Commission obtains the authority to implement this rule pursuant to sections 4, 5, and 8 of the Hillsborough County Environmental Protection Act, chapter 84-446, Laws of Florida, as amended, the Mangrove Trimming and Preservation Act, sections 403.9321-403.9333, F.S., and section 403.182, F.S..~~

~~(b) The Florida Department of Environmental Protection (FDEP) has delegated its authority under chapter 403, F.S. to regulate the trimming and alteration of mangroves to the Commission, which requested such delegation and demonstrated to the FDEP that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove regulatory program. In no event shall more than one permit for the alteration or trimming of mangroves be required within the jurisdiction of the Commission.~~

~~Section History Adopted 01/12/2006~~

~~Effective date: 10/19/2006~~

1-14.04 — DEFINITIONS

~~For the purposes of this chapter, the term:~~

- ~~(a) *Alter* means anything other than trimming of mangroves including removal, destruction or defoliation of mangroves or the cutting of prop roots and pneumatophores.~~
- ~~(b) *Commission* means the Environmental Protection Commission of Hillsborough County.~~
- ~~(c) *Defoliate* means the removal of leaves by cutting or other means to the degree that the plant's natural functions have been severely diminished or which results in the death of all or part of the mangrove.~~
- ~~(d) *Executive Director* means the appointed Environmental Director of the Environmental Protection Commission of Hillsborough County or authorized staff.~~
- ~~(e) *Maintenance* means trimming intended to maintain the height and configuration of a mangrove area that was legally trimmed either pursuant to a valid exemption or a previously issued permit from the appropriate governmental agency. However, where a pattern of trimming has stopped such that the use intended and obtained by the trimming has been broken or lost for a sustained period of time, further trimming will not be considered maintenance.~~

- ~~(f) Mangrove means any specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).~~
- ~~(g) Mangroves on lands that have been set aside as mitigation means mangrove areas on public or private land which have been created, enhanced, restored, or preserved as mitigation under a Mitigation Agreement pursuant to chapter 111, Rules of the Commission, or a permit issued under section 403.9328, F.S., or a dredge and fill permit issued under sections 403.91 403.929, F.S. (1984 Supplement, as amended), or a dredge and fill permit, management and storage of surface waters permit, or environmental resource permit issued under part IV of chapter 373, F.S., applicable dredge and fill licenses or permits issued by any other local regulatory agency, a resolution of an enforcement action, or a conservation easement that does not provide for trimming.~~
- ~~(h) Professional mangrove trimmer means a person who meets the qualifications set forth in section 1-14.08, Rules of the Commission.~~
- ~~(i) Public lands set aside for conservation or preservation means: (1) Conservation and recreation lands under chapter 259, F.S.; (2) County, State and national parks; (3) State and national reserves and preserves, except as provided in section 403.9326(3), F.S.; (4) State and national wilderness areas; (5) National wildlife refuges (only those lands under Federal Government ownership); (6) Lands acquired through the Water Management Lands Trust Fund, Save Our Rivers Program; (7) Lands acquired under the Save Our Coast program; (8) Lands acquired by the Hillsborough County Environmental Lands Acquisition and Protection Program; (9) Lands acquired under any environmentally endangered lands bond~~

program; (10) Public lands designated as conservation or preservation under a local government comprehensive plan; (11) Lands purchased by a water management district, the Fish and Wildlife Conservation Commission, or any other governmental agency for conservation or preservation purposes; (12) Public lands encumbered by a conservation easement that does not provide for the trimming of mangroves; and (13) Public lands designated as critical wildlife areas by the Fish and Wildlife Conservation Commission.

- ~~(j) Riparian mangrove fringe means mangroves growing along the shoreline of a private property, the depth of which does not exceed 50 feet as measured waterward from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline to the trunk of the most waterward mangrove tree. Riparian mangrove fringe does not include mangroves on uninhabited islands, or any public lands, including sovereign submerged lands in Hillsborough County, or mangroves on lands that have been set aside as mitigation, if the permit, mitigation agreement, enforcement instrument, or conservation easement establishing the mitigation area did not include provisions for the trimming of mangroves.~~
- ~~(k) Trim means to cut mangrove branches, twigs, limbs, and foliage, but does not mean to cut prop roots or pneumatophores or to remove, defoliate, or destroy the mangroves.~~

~~Section History - Adopted 01/12/2006
Effective date: 10/19/2006~~

~~1-14.05 EXEMPTIONS~~

- ~~(a) Upon at least 10 days and no more than 30 days prior written notice being provided to the Executive Director the following activities are~~

exempt from the permitting requirements of the Executive Director and any other provision of law if no herbicide or other chemical is used to remove mangrove foliage:

~~—— (1) Mangrove trimming in riparian mangrove fringe areas that meet the following criteria:~~

~~(i) The riparian mangrove fringe must be located on lands owned or controlled by the person who will supervise or conduct the trimming activities.~~

~~(ii) The mangroves that are the subject of the trimming activity may not exceed 10 feet in pretrimmed height as measured from the substrate and may not be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate. This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.~~

~~—— (2) Mangrove trimming supervised or conducted exclusively by a professional mangrove trimmer in riparian mangrove fringe areas that meet the following criteria:~~

~~(i) The riparian mangrove fringe must be located on lands owned or controlled by the professional mangrove trimmer or by the person contracting with the professional mangrove trimmer to perform the trimming activities.~~

~~(ii) The mangroves that are the subject of the trimming activity may not exceed 24 feet in pretrimmed height and may not be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate.~~

~~(iii) The trimming of mangroves that are 16 feet or greater in pretrimmed height must be conducted in stages so that no more than 25 percent of the foliage is removed annually.~~

~~(iv) A professional mangrove trimmer that is trimming red mangroves for the first time under the exemption provided by this paragraph must notify the Executive Director or authorized~~

~~staff in writing at least 10 days before commencing the trimming activities.~~

~~(v) This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.~~

~~—— (3) Mangrove trimming in riparian mangrove fringe areas which is designed to reestablish or maintain a previous mangrove configuration if the mangroves to be trimmed do not exceed 24 feet in pretrimmed height. The reestablishment of a previous mangrove configuration must not result in the destruction, defoliation, or removal of mangroves. Documentation of a previous mangrove configuration may be established by affidavit of a person with personal knowledge of such configuration, through current or past permits from the state or local government, or by photographs of the mangrove configuration. Trimming activities conducted under the exemption provided by this paragraph shall be conducted by a professional mangrove trimmer when the mangroves that are the subject of the trimming activity have a pretrimmed height which exceeds 10 feet as measured from the substrate. A person trimming red mangroves for the first time under the exemption provided by this paragraph must notify the Executive Director in writing at least 10 days before commencing the trimming activities.~~

~~—— (4) The maintenance trimming of mangroves that have been previously trimmed in accordance with an exemption or government environmental regulatory authorization, including those mangroves that naturally recruited into the area and any mangrove growth that has expanded from the area subsequent to the authorization, if the maintenance trimming does not exceed the height and configuration previously established. Historically established maintenance trimming is grandfathered in all respects, notwithstanding any other provisions of law. Documentation of established mangrove configuration may be~~

verified by affidavit of a person with personal knowledge of the configuration or by photographs of the mangrove configuration.

(b) The following activities are exempt from the permitting requirements of the Executive Director and any other provision of law if no herbicide or other chemical is used to remove mangrove foliage

(1) The trimming of mangrove trees by a state licensed surveyor in the performance of her or his duties, if the trimming is limited to a swath of 3 feet or less in width.

(2) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company, or by a federal, state, county, or municipal agency, or by an engineer or a surveyor and mapper working under a contract with such utility company or agency, when the trimming is done as a governmental function of the agency.

(3) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company in or adjacent to a public or private easement or right-of-way, if the trimming is limited to those areas where it is necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its customers and if work is conducted so as to avoid any unnecessary trimming of mangrove trees.

(4) The trimming of mangrove trees by a duly constituted communications, water, sewerage, or electrical utility company on the grounds of a water treatment plant, sewerage treatment plant, or electric power plant or substation in furtherance of providing utility service to its customers, if work is conducted so as to avoid any unnecessary trimming of mangrove trees.

(5) Minor mangrove trimming pertaining to construction of docks and associated structures permitted by another appropriate regulatory agency when such application for construction has been reviewed

and specifically approved in writing by EPC staff, and regular maintenance trimming necessary to maintain the footprint of the permitted structure.

(e) Any rule, regulation, or other provision of law must be strictly construed so as not to limit directly or indirectly the exemptions provided by this section for trimming in riparian mangrove fringe areas except as provided in section 403.9329(7)(b), F.S.. Any rule or policy of the FDEP, or Commission, that directly or indirectly serves as a limitation on the exemptions provided by this section for trimming in riparian mangrove fringe areas is invalid.

(d) The designation of riparian mangrove fringe areas as aquatic preserves or Outstanding Florida Waters shall not affect the use of the exemptions provided by this section.

(e) Trimming that does not qualify for an exemption under this section requires a permit as provided.

~~Section History Adopted 01/12/2006
Effective date: 10/19/2006~~

~~1-14.06 TRIMMING OF MANGROVES; PERMIT REQUIREMENTS~~

(a) For those projects that do not qualify under the provisions of section 1-14.05, Rules of the Commission the Executive Director shall authorize mangrove trimming via a permit issued pursuant to this section, provided the trimming is consistent with the following criteria:

(1) The mangroves to be trimmed are located on lands owned or controlled by the applicant or on sovereign submerged lands immediately waterward and perpendicular to such lands.

(2) The mangroves to be trimmed are located immediately waterward of the shoreline.

(3) The mangroves to be trimmed are not located on any of the following areas, except where necessary to protect the public health, safety, and welfare, or to enhance public

use of, or access to, conservation areas in accordance with management plans approved by the State, County or Municipality:

- (i) uninhabited islands; or
- (ii) lands that have been set aside for mitigation; or
- (iii) public lands set aside for conservation and preservation, except those as set forth solely pursuant to sub-section 1-14.04(i)(10), Rules of the Commission.

(4) The trimming of mangroves is supervised on-site or conducted exclusively by a professional mangrove trimmer or designee.

(5) The mangroves subject to trimming under the permit do not extend more than 500 feet waterward of the wetland jurisdictional line as established in chapter 1-11, Rules of the Commission, in a direction perpendicular to the shoreline.

(6) No more than 33 percent of the drip line area (footprint) of mangroves eligible for trimming under this subsection at the property will be trimmed.

(7) No mangrove will be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate.

(8) No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove.

(9) The trimming does not result in the alteration of the mangroves.

(10) All trimming of live mangroves must be conducted in stages so that no more than 25 percent of the pretrimmed foliage or height of the trees is removed annually. Regrowth from the previous year's trimming may be trimmed in addition to the 25 percent mentioned above.

(11) Trimming may only be conducted from April 1 through November 1.

(12) Only non-petroleum based lubricants must be used in chainsaws.

(13) All species listed as a noxious weed or invasive plant pursuant to the Florida Statutes or Florida Administrative Code that are within 25 feet of the mangrove canopy to be

trimmed must be removed from the applicant's property. Where the removal is to a degree that a potential for erosion is created, the area must be re-stabilized. Stumps and roots may be killed and left in place if desired.

(14) All trimmed branches and trunks shall be removed from the wetlands and disposed of, as provided by law, unless otherwise permitted in an authorization from the Executive Director.

(b) Requests for permits to trim mangroves must be submitted on the Executive Director's application form and must contain sufficient information to enable the Executive Director to determine the scope of the proposed trimming and whether the activity will comply with the conditions of this section.

(c) Requests to trim mangroves that exceed any of the requirements as set forth above shall be reviewed in accordance with section 1-14.07.

~~Section History Adopted 01/12/2006~~

~~Effective date: 10/19/2006~~

1-14.07 OTHER TRIMMING AND ALTERATION OF MANGROVES; PERMIT REQUIREMENT

(a) The Executive Director, when deciding to issue or deny a permit for mangrove trimming that exceeds the requirements set forth in sections 1-14.05 and 1-14.06, Rules of the Commission or mangrove alteration under this section, shall use the criteria in section 373.414(1) and (8), F.S., as follows: (1) Whether the activity will adversely affect the public health, safety, or welfare or the property of others; (2) Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats; (3) Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling; (4) Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity; (5) Whether the activity will be of a temporary or permanent nature; (6) Whether

~~the activity will adversely affect archaeological resources under the provisions of section 267.061, F.S.; (7) The current condition and relative value of functions being performed by areas affected by the proposed activity; and (8) The cumulative impact of similar activities pursuant to section 373.414(8), F.S..~~

~~(b) If the applicant is unable to meet these criteria, the Executive Director and the applicant shall first consider measures to reduce or eliminate the unpermittable impacts. If unpermittable impacts still remain, the applicant may propose, and the Executive Director shall consider, measures to mitigate the otherwise unpermittable impacts.~~

~~(c) The request must be made with sufficient specificity to enable the Executive Director to determine the scope and impacts of the proposed alteration activities.~~

~~(d) A request for a permit for trimming that exceeds the requirements set forth in sections 1-14.05 and 1-14.06, Rules of the Commission shall be reviewed pursuant to Section 1-11.08, Rules of the Commission and this rule chapter.~~

~~(e) A request for a permit for the alteration of mangroves will be reviewed pursuant to both the entire chapter 1-11, Rules of the Commission and this rule chapter.~~

~~(f) The use of herbicides or other chemicals for the purposes of removing leaves from a mangrove is strictly prohibited.~~

~~Section History Adopted 01/12/2006
Effective date: 10/19/2006~~

1-14.08 — PROFESSIONAL MANGROVE TRIMMERS

~~(a) For purposes of the Executive Director, the following persons are considered professional mangrove trimmers: (1) Certified arborists, certified by the International Society of Arboriculture; (2) Professional wetland scientists, certified by the Society of Wetland Scientists; (3) Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals; (4) Certified ecologists certified by the~~

~~Ecological Society of America; (5) Landscape architects licensed under part II of chapter 481, F.S.. Only those landscape architects who are certified in the state may qualify as professional mangrove trimmers under this chapter, notwithstanding any reciprocity agreements that may exist between this state and other states; (6) Persons who have conducted mangrove trimming as part of their business or employment and who are able to demonstrate to the Executive Director, as provided in subsection (b), a sufficient level of competence to assure that they are able to conduct mangrove trimming in a manner that will ensure the survival of the mangroves that are trimmed; and (7) Persons who have been qualified by any delegated local government and meet the standards set forth in subsection (b).~~

~~(b) A person who seeks to assert professional mangrove trimmer status under paragraphs (a)(6) or (7) to trim mangroves under the exemptions in section 1-14.05, Rules of the Commission and permits provided in sections 1-14.06 and 1-14.07, Rules of the Commission, must request in writing professional mangrove trimmer status from the Executive Director. The Executive Director shall grant or deny any written request for professional mangrove trimmer status within 60 days after receipt of a complete application. If professional mangrove trimmer status has been granted by the Executive Director, no additional requests for professional mangrove trimmer status need be made to the Executive Director to trim mangroves under the exemptions provided. Persons applying for professional mangrove trimmer status must provide to the Executive Director a notarized sworn statement attesting: (1) that the applicant has successfully conducted trimming on a minimum of 10 mangrove trimming projects authorized by the Florida Department of Environmental Protection or a local government program. Each project must be separately identified by project name, professional mangrove trimmer and permit number where applicable; (2) That a~~

~~mangrove trimming or alteration project of the applicant is not in violation of sections 403.9321-403.9333, F.S., chapters 1-11 and 1-14, Rules of the Commission, or any lawful rules adopted thereunder; and (3) That the applicant possesses the knowledge and ability to correctly identify mangrove species occurring in this state.~~

~~(e) The Executive Director may deny a request for professional mangrove trimmer status if the Executive Director finds that the information provided by the applicant is incorrect or incomplete, or if the applicant has demonstrated a past history of noncompliance with the provisions of sections 403.9321-403.9333, F.S., chapters 1-11 and 1-14, Rules of the Commission, or any adopted mangrove rules.~~

~~(d) A professional mangrove trimmer status granted by the Executive Director may be revoked by the Executive Director for any person who is responsible for any violations of sections 403.9321-403.9333, F.S., chapters 1-11 and 1-14, Rules of the Commission, or any adopted mangrove rules.~~

~~(e) The Executive Director's decision to grant, deny, or revoke a professional mangrove trimmer status is subject to appeal pursuant to section 1-2.30, Rules of the Commission.~~

~~(f) All professional mangrove trimmers working in Hillsborough County must register with the Executive Director by paying an annual registration fee as provided in chapter 1-6, Rules of the Commission and by demonstrating that they meet the criteria of this section.~~

~~(g) All professional mangrove trimmers working in Hillsborough County must notify in writing the Executive Director prior to conducting any mangrove trimming or alteration including those activities authorized under the exemptions provided.~~

~~(h) All professional mangrove trimmers or their designee working in Hillsborough County must be on site when mangrove trimming activities are performed under their supervision.~~

~~Section History Adopted 01/12/2006~~

~~Effective date: 10/19/2006~~

~~1-14.09 — ENFORCEMENT~~

~~(a) A person may not alter or trim, or cause to be altered or trimmed, any mangrove within the landward extent of wetlands and other surface waters, as defined in sections 1-11.03 and 1-11.04, Rules of the Commission and section 62-340.200(19), Florida Administrative Code, using the methodology in section 373.4211, F.S., and chapter 62-340, Florida Administrative Code, except as applicable under the exemptions of section 1-14.05, Rules of the Commission, or under a permit issued under sections 1-14.06 or 1-14.07, Rules of the Commission by the Executive Director. Any violation of this chapter is presumed to have occurred with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property, including the upland riparian property, upon which the violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.~~

~~(b) Any area of mangroves that have been trimmed or altered in violation of this rule must be restored. Restoration must be accomplished by replanting mangroves within six months of the initial violation, in the same location and of the same species as each mangrove altered or trimmed, to achieve within 5 years a canopy area equivalent to the area altered or trimmed. Where all or a portion of the restoration is not practicable, as determined by the Executive Director, the impacts resulting from the alteration or trimming of the mangroves must be offset by mitigation. Mitigation must be accomplished pursuant to section 1-11.08, Rules of the Commission. Finally, where all or a portion of the mitigation is not practicable, as determined by the Executive Director, the impacts resulting from the alteration or trimming of the mangroves must be offset by~~

~~purchasing credits from an approved mitigation bank created under section 373.4135, F.S., at a mitigation ratio of no less than 2 to 1 and no greater than 5 to 1 credits to affected area. To be accepted by the Executive Director, mitigation credits must be specifically obtained for any of the following: creation; restoration; and/or enhancement of mangrove wetlands located in Hillsborough County.~~

~~(c) In all cases, the applicant, permittee, landowner and/or upland riparian owner, and person responsible for performing the trimming are jointly and severally liable for performing restoration or mitigation under paragraph (b) and for ensuring that the restoration or mitigation successfully results in a mangrove community that will offset the impacts caused by the trimming or alteration of mangroves. The applicant, landowner and/or upland riparian owner, and person responsible for performing the trimming or alteration are also jointly and severally subject to penalties.~~

~~(d) Any replanting for restoration under this subsection must result in at least 85 percent documented survival of the planted mangroves 1 year after planting. Replanting must be sufficient to achieve a canopy area equivalent to the area altered or trimmed within 5 years of the alteration or trimming.~~

~~(e) Pursuant to Section 403.9332, F.S., the Executive Director shall enforce the provisions of this chapter in the same manner and to the same extent provided for in sections 17, 18 and 19 of the Hillsborough County Environmental Protection Act, chapter 84.446, Laws of Florida, as amended and/or sections 403.121, 403.141, and 403.161, F.S., for the first violation, which includes, but is not limited to, the imposition of a civil penalty in an amount of not more than \$10,000 per offense along with restoration of the mangroves consistent with the criteria of subsection (b) above.~~

~~(f) Pursuant to subsection 403.9332(3), F.S. for second and subsequent violations, the Executive Director, in addition to the provisions of sections 403.121, 403.141 and 403.161, F.S., shall impose additional monetary~~

~~penalties for each mangrove illegally trimmed or altered as follows: (1) Up to \$100 for each mangrove illegally trimmed; or (2) Up to \$250 for each mangrove illegally altered.~~

~~(g) In addition to the penalty provisions provided in subsections (b) (f), pursuant to subsection 403.9332(4), F.S., for second and all subsequent violations by a professional mangrove trimmer, the Executive Director shall impose a separate penalty upon the professional mangrove trimmer up to \$250 for each mangrove illegally trimmed or altered.~~

~~Section History Adopted 01/12/2006~~

~~Effective date: 10/19/2006~~

~~1-14.10 FEES~~

~~(a) All applications for mangrove trimming permits shall be accompanied by a fee as provided for in Chapter 1-6, Rules of the Commission.~~

~~Section History Adopted 01/12/2006~~

~~Effective date: 10/19/2006~~

~~1-14.11 ADMINISTRATION~~

~~(a) Permits issued shall expire one year from permit issuance if the project has not been completed, or if the initial trim has not been completed for those projects where trimming is to be phased in annually. Extensions may be granted by the Executive Director for good cause shown.~~

~~(b) The Executive Director may revoke any permit issued, for fraud, misrepresentation or violation of the conditions imposed on the permit. Written notice of the intent of the Executive Director to revoke a permit shall be provided to the applicant, setting forth the specific reasons for the revocation. Upon notice of the Executive Director's intent to revoke the permit, the applicant shall immediately cease all trimming and alteration activities on site. The applicant shall have thirty days to show cause why the permit should not be revoked.~~

~~(c) The Executive Director may issue either a citation to cease and order to correct or a notice~~

~~of violation for any site where trimming or alteration has commenced and a permit has not been obtained but is required pursuant to this chapter. Any person receiving such an order for cessation of operations shall immediately comply with the requirements thereof. It shall be a violation of this chapter for any person to fail or to refuse to comply with a citation to cease and order to correct or a notice of violation issued under the provisions of this section.~~

~~Section History—Adopted 01/12/2006~~

~~Effective date: 10/19/2006~~

Rule History:

Adopted January 12, 2006

Repealed XX/XX/XXXX

EPC Wetlands Protection: Improving the Process, Maintaining the Protection

Overview of Benefits of Hybrid Approach

- Significant cost savings of \$367,859
- Consolidates multiple agency approvals
- Reduces applicant's time seeking project approvals
- Addresses minor activities
- New Basis of Review & Applicant Handbook
- Customer Service improvements
- Maintains local government oversight

Proposed Rule Changes for adoption in August 2007

- Exemptions and/or Noticed Exemptions for selected activities such as dredging and filling in artificially created wetlands (examples: upland cut ditches, roadway ditches, stock watering ponds, and other upland cut open surface waters). Applicable forms will be on the EPC website and will be able to be submitted online.
 - Exemptions for maintenance of lawfully constructed and operated water management structures in wetlands including but not limited to fish ponds, ditches, tail-water recovery areas and stormwater systems.
 - Amend the miscellaneous activities rule to define limits and conditions for boat ramps, docks, boat lifts, nuisance vegetation removal, boardwalks and aids to navigation in order to streamline the approval process. The new advisory board proposed below will help in recommending future categories.
 - Complete public workshops, finalize rule language for inclusion in Public Hearing 8/16/07
- ✓ **Result – Clearer rule language defining exemptions and miscellaneous activities with priorities set on higher quality wetlands and surface waters**

Future Proposed Rule Changes

- Establish a **Technical Advisory Committee** to develop and recommend further changes to exemption and miscellaneous activities rule language for future adoption.
- **Obtain delegations and streamline permitting** through rule development in order to achieve one stop permitting, including:
 - Adoption of portions of the state's Basis of Review
 - Adoption of applicable sections of the state's wetland statute Sec. 373.414, F.S
 - Adoption of applicable portions of Tampa Port Authority's submerged lands management rules

- Develop an **EPC Basis of Review** document and an associated **Applicant Handbook** for implementing Ch. 1-11. Include guidelines for determining “reasonable use”, permitting criteria, conditions for authorizations, environmental criteria, listed species, water quality criteria, public interest criteria, mitigation requirements, definitions and procedures for determining historic uplands and project specific guidance.
- Develop a **classification of wetlands** based on ecological values of the functions provided by the wetlands to be incorporated into the regulatory process as a guide in determining whether a wetland impact can be approved. In addition, the proposed rule may also consider net environmental benefits to allow enhanced mitigation proposals in determining whether a wetland impact can be approved.
- **Further define miscellaneous activities** language in order to develop a set of guidelines for construction of certain structures and setback requirements that conforms to the Land Development Code where diminimus impacts are expected to result.
- **Complete Hybrid Option** tasks within one year. Develop a prioritized timeline to accomplish Future Proposed Rule Changes within 9 months with established periodic milestones similar to the following:
 - Agricultural rule adopted within 60 days
 - FDEP delegation and rule adoption within 120 days
 - Classification of wetlands, consideration of net environmental benefits and Basis of Review by May 2008
- **Agricultural Ground and Surface Water Management (AGSWM)** - EPC will coordinate with SWFWMD in the implementation of the AGSWM program for agricultural projects and develop specific rules and standards to incorporate the principles of AGSWM. EPC will consider projects that go through the AGSWM process and receive an exemption from permitting or an Environmental Resource Permit as meeting the EPC reasonable use criteria for impacts. For projects described above and for production related agricultural activities on property engaged in bona fide agricultural uses (except for harvesting primary growth natural forested wetlands), mitigation will be required for cumulative impacts greater than ½ acre and for individual isolated wetlands greater than ¼ acre.
- Establish by rule, **time frames** for review activities and post time frames on web.
 - ✓ **Result – Better guidance for applicants, clearer guidelines, clearer time frames, conformance with delegation agreements**

Customer Service Changes

- **Establish Wetlands Advisory Committee.** The committee will consist of an inner circle of technical experts and an outer circle of stakeholders. The technical experts to be selected by the Executive Director such as the proposed Committee Chairman Dr. Tom Crisman (Research Fellow and Professor of Environment at the USF Patel Center for Global Solutions and past Director of the University of Florida Howard T. Odum Center for Wetlands). The committee will review wetland rule amendment proposals, regulatory processes, and evaluate comprehensive wetlands issues over time.
 - ✓ **Result – Stakeholder and technical expert input on entire program/guidance**

- **Assign EPC wetlands permitting ombudsman (Christina Bryant).** The ombudsman service is available to assist all applicants but especially small farms and “mom & pop” projects in understanding permitting requirements, obtaining application status, and assisting in contacting staff in other agencies, and ensuring that applicants or citizens have a voice to agency upper management.
 - ✓ **Result – Professional assistance to help applicants understand the regulatory process**

- **Establish a formal on-line application form.** Provide for electronic submittals of online applications through the EPC website and develop a wetland application checklist to assist applicants in making a complete submittal.
 - ✓ **Result – Reduce time for review and errors in communication from hand written applications without submittal guidance and result in more complete submittals with auto-feedback on missing information**

- **Watershed Mitigation Banking & ROMA’s (Regional Off-site Mitigation Areas)** EPC will proactively coordinate with SWFWMD, DEP and ELAPP to develop a mitigation banking strategy for wetland impacts that will encourage a diversity of habitat types in as many of the county’s watersheds as possible. Part of the strategy will include clear measures in EPC’s rules where mitigation bank credits can be used.
 - ✓ **Result – More streamlined permitting procedures and opportunities for more effective and successful mitigation wetlands**

Process Changes

- **Combined DEP Environmental Resource Permit (ERP), Tampa Port Authority, and EPC authorizations.** Request delegation from the DEP for single family homes, and the associated docks, and shoreline stabilization projects. The delegation will include EPC's stricter standards. Accept delegation from the Tampa Port Authority for minor works permits. This delegation will also utilize EPC standards. These combined delegated programs will roll into one process applicable federal, state, Tampa Port Authority, and local approvals and will include all permitting, compliance and enforcement activities. Included is the continuation of the existing delegated program in which EPC is the sole agency with authorization to issue mangrove trimming permits and associated compliance and enforcement activities. This effort has been determined to be a first of its kind in the State of Florida.

- ✓ **Result – 1 stop permitting**

- **Phosphate mining reviews.** EPC to continue permitting, compliance and enforcement activities, but work more closely with DEP Bureau of Mining and PGM to coordinate review process and possibly co-process applications. EPC already is extensively involved through "Life of Mine" permits, which extend out to 2026 for significant areas of phosphate mines in Hillsborough County.

- ✓ **Result – Streamlined permitting**

- **Development Review Process** (this is coordinated with PGM, City of Tampa, City of Temple Terrace, and City of Plant City for a cradle to grave review)
 - Conduct a process review to evaluate EPC Development Review activities to determine where the most effective input may occur. The goal will be to work with PGM and the municipalities to streamline the process but improve the product and eliminate redundant reviews.
 - The proposed EPC review will focus on the front end of projects to ensure minimization and avoidance of wetland impacts. A significant savings in staff time is anticipated. Estimated time to complete this task is 4 months.
 - As a result of the process audit, tailor EPC input to the most effective parts of the process with staffing efficiency as a guide.
 - Explore with PGM an instant document dispersal program to eliminate delays of document transfer. Determine the feasibility and cost of obtaining the necessary equipment and training to handle digitally submitted applications, thus eliminating delays in transferring hard copies. Report to the Board.
 - Continue EPC participation in City of Tampa, City of Temple Terrace, and City of Plant City development reviews. These processes can also be reviewed during the audit process.

- ✓ **Result – Streamlined but more effective process with expected savings in staff time**

- **SWFWMD Coordination.** Both agencies will continue to conduct project reviews in a way that complements each other's work by emphasizing different criteria for project approval. EPC concentrates on wetlands protection by its more stringent criteria for avoidance and minimization of wetland impacts through a cradle to grave review. SWFWMD reviews wetlands impacts and stormwater management issues through the ERP.
 - EPC will supply SWFWMD with early project information from development review as outlined above.
 - EPC will attend SWFWMD's regular staff coordination meetings to review projects and maintain consistency for permitting and delineation procedures.
 - EPC will cooperate with PGMD, SWFWMD, and the cities to explore a sharing of electronic submittal information in a form accessible to all parties.
 - Continue the Memorandum of Understanding (MOU) between the EPC and SWFWMD for compliance and enforcement of SWFWMD ERP projects and mitigation compliance. Pursuant to the MOU between the two agencies, SWFWMD and the EPC coordinate compliance/enforcement responsibilities for ERP. Prior to issuing the ERP Operating Permit, SWFWMD handles compliance/enforcement on their behalf. After the permit is issued, EPC conducts compliance/enforcement for the mitigation agreements for both agencies.
 - EPC will be the first respondent to all complaints on wetlands and water quality violations in the County. The EPC currently has an on-call operation for citizen complaints that operates 24 hours a day, seven days a week.
- ✓ **Result: Greatly increased coordination between EPC and SWFWMD, better guidelines for applicants**

- **Army Corps of Engineers (ACOE)**

- Explore feasibility and economics of obtaining a general permit authorization from the ACOE. This would provide ACOE approval for wetland impacts where EPC authorizes the impact through its review.
 - Explore feasibility of obtaining ACOE delineation authority.
- ✓ **Result: This would enable streamlined services and complement 1 stop permitting identified above, for additional ACOE wetland permitting**

SUMMARY OF RESULTS

- Streamlined permitting process and faster turnaround time
- Savings of \$367,859 (Five FTE's)
- Eliminate multiple reviews
- Clearer rules for minor activities
- Consolidates multiple agency approvals
- Priorities set on wetlands protection
- Drastically reduces real or perceived duplication
- Emphasizes customer service
- Maintains resource protection
- Many items have short term implementations; full implementation 1 year

Economic analysis : The economic analysis is provided on attached charts.

ENVIRONMENTAL PROTECTION COMMISSION WETLANDS HYBRID PROPOSAL					
FY 08					
	Budget		Hybrid		
	Submission		Proposal	Difference	
Revenues					
Fees	\$1,152,960		\$1,152,960	\$0	
Phosphate Severance Tax	152,338		152,338	0	
Estimated Additional Revenue Generated by DEP Delegation			31,700	31,700	
Total Revenues	\$1,305,298		\$1,336,998	\$31,700	3%
Expenditures					
Personal Services	\$2,288,847		\$1,950,260	-\$338,587	
Operating Expenditures	122,293		93,021	-29,272	
Total Expenditures	\$2,411,140		\$2,043,281	-\$367,859	-15%
Revenues Less Expenditures	-\$1,105,842		-\$706,283	\$399,559	-36%
FTE Positions	29		24	-5	-17%

ENVIRONMENTAL PROTECTION COMMISSION WETLANDS HYBRID PROPOSAL

