

**Draft - April 16, 2021**

**ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY**

**BASIS OF REVIEW**

**For**

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

- EPC Wetlands Management Division -

CHAPTER V - MISCELLANEOUS ACTIVITIES IN WETLANDS

**5.1 Introduction**

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

**5.2.2 ~~Swimming~~ and Open Water Access**

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

the widths of any docks or boat ramps must be subtracted from the 25 foot ~~encumbered~~ swim or open water access area. To lessen adverse impacts to natural shoreline features it may be advisable to co-locate facilities.

### **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 Whole Lake Treatment**

#### A. Introduction:

Whole lake treatment constitutes “clearing” of surface waters under the definition of “development” as defined in Section 1-11.02(2)(b), Rules of the EPC. However, whole lake treatment conducted in open-water portions of ponds and lakes 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. Whole lake treatment can include entire waterbody treatment or be limited to portions of a waterbody. Whole lake treatment does not include the activities concerning emergent vegetation such as shorelines and littoral areas which are regulated by Chapter 1-11 and the Basis of Review Section 5.2.1 and Section 5.2.2, respectively. Whole lake treatment activities are limited to removal or maintenance 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. Whole Lake Treatment Noticed Exemption:

Whole lake treatment activities targeted to 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.

(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, whole lake treatment of non-native vegetation in lakes or ponds 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) This exemption from EPC authorization does not authorize access to other person's private property nor is it intended to provide any property interest or easement to access lake areas.

(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, DEP, District or United States Army Corps of Engineers.

### C. Whole Lake Treatment MAIW

Whole lake treatment targeted to native vegetation may be authorized through an MAIW. The following conditions apply to all whole lake treatment 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. 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) Any person engaged in whole lake treatment must have a copy of the MAIW permit when conducting control activities.

D. Condition Applicable to All Whole Lake Treatment:

(1) The applicant must be an owner of some portion of submerged lands within the lake or pond or own property immediately adjacent to the waterbody.

(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) Whole lake treatment is prohibited in areas that serve as significant habitat, such as roosting or nesting areas, for state listed threatened or endangered species.

(5) Whole lake treatment 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 whole lake treatment, each permittee shall notify potential users of waters, subject to or affected by the whole lake treatment, 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 the 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 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 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.

### **5.3 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~~ must accompany the application, for each of the following. Fences, docks, boat ramps, rip-rap, and boardwalks located along floodways may require a Federal Emergency Management Agency “No-Rise Study.” Pursuant to Section 1-11.07, Rules of the EPC, any Any-activity subject to the regulatory authority of the Tampa Port Authority (TPA) in Tampa Port Authority d/b/a Port Tampa Bay (Port Tampa Bay) jurisdictional waters shall not qualify for require a separate MAIW authorization if a permit is obtained from Port Tampa Bay (with an associated EPC environmental review) or is issued by the EPC pursuant to any Interlocal Agreement with Port Tampa Bay. A Minor Work Permit obtained from Port Tampa Bay or issued by the EPC is subject to the rule criteria herein and shall be incorporated in the final comments or Permit. These proposed activities will require a separate TPA permit.

#### **5.3.1 Boat Ramps**

~~Single family residential boat~~ Boat ramps deemed eligible under the MAIW provisions shall be limited to a single lane and must not exceed a boat ramp hardened surface width of no greater than 12 feet, and The boat ramp hardened surface shall also be minimized to the greatest extent practicable. The above water portion of the ramp must be located landward of the mean or ordinary high water line or the top of bank. The portion of boat ramp located immediately above the mean or ordinary high water line (“above water portion”) shall be hardened 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. 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 so as avoid impacts to trees and to minimize cause the least environmental impact. The installation and maintenance of appropriate erosion controls will be required. The width of the ramp will be subtracted from the maximum 25 foot ~~encumbered~~ open water access area allowed per property.

### 5.3.2 Fences

~~All proposals to construct fences within wetlands will be evaluated on a case-by-case basis. Fences constructed in wetlands/other surface waters require a permit, unless they meet a State pre-emption under Section 604.50, F.S. Impacts from fence installations shall be minimized to the greatest extent practicable. Several types of fence, including hog wire, wrought iron slats slatted fencing with a minimum spacing of 3.5 inches between slats, split rail, and 3-5 strand wire, wood privacy and chain link fence with the bottom elevated off the substrate at the ordinary high-water line least four inches may be considered appropriate for construction within wetlands and other surface waters. Fencing material composed of horizontal metal wire attached to posts, which may include occasional perpendicular wires to maintain spacing, 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. and a-All attempts shall be made to route the boardwalk to avoid impacts to existing trees 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 will entail shall require an detailed assessment of existing wetland and aquatic vegetation at the proposed site. and This review may also include an assessment of the benthic community at the proposed site where existing natural resources warrant such assessment. If the proposed location results in wetland impacts, the site shall be assessed for alternate locations which would minimize environmental impacts.

(2) Construction of the structure shall attempt to avoid the removal of any trees and shall be located to minimize vegetation disturbance or removal. 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, ~~boathouses,~~ and davits, must be located so that a minimum of two feet of water depth exists under the slip area during Mean Low, Ordinary Low, or Low Guidance Level elevation water conditions, whichever is appropriate. The bottom stringers of the proposed dock structure shall be constructed a minimum of one foot above Mean High or Ordinary High Water.

(5) The structure's terminal platform must be located waterward of or beyond the vegetative littoral fringe. Terminal platform is defined in this rule as the part of the dock or pier 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. 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 or sovereignty lands 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. 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.

(6) 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.

(7) No dredging, filling, clearing, or scouring shall be allowed except for the setting of pilings. During construction activities, the area of temporary disturbance to vegetation shall be limited to two feet on either side of the structure. No fish cleaning facilities, boat repair facilities or equipment, or fueling facilities on any structure shall be authorized through the MAIW. The structure shall be for recreational use only; with no more than one structure per single family residence

(8) 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.(8), 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; and

c) a second structure may be located on shorelines greater than 195 linear feet where the structures are at least 65 feet apart and 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.

(d) a second structure in Port Tampa Bay jurisdictional waters shall be of nominal consequence to the affected waterbody, located where no resources are present, 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.

(9) Any structure must ~~and shall~~ be located within the applicant's area of submerged land ownership (within their property boundaries) or for sovereignty land, their riparian limits. ~~The~~ 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.

(10) 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.

#### **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 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 with no deviation from the structure and maintains a uniform width along the entire waterward length. Marginal structures shall meet all conditions in Section 5.3.4, as applicable, in addition to the following:

(1) If vegetation is present along the shoreline or there is evidence in the immediate area that adequate depths exist that would allow for vegetation recruitment, the marginal structure shall be located within the allowed swim

- access clearing zone. If the structure cannot be located in this area, the widths of any structure must be subtracted from the 25 foot swim access area.
- (2) Within a 25 foot swim access area, 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.
  - (3) If there is an existing 25 foot swim access area, in accordance with Section 5.2.2, it's encouraged to co-locate facilities within the swim access area. If a proposed marginal structure cannot be located within the existing 25 foot swim access area, an area equivalent to the width of the proposed marginal structure, within the existing swim access area, shall be allowed to naturally revegetate.
  - (4) In Port Tampa Bay jurisdictional waters and any other artificially created residential canals where there is no vegetation and/or benthic resources present due to water depths, the 25 foot swim access area limitation is not applicable. A marginal structure located within Port Tampa Bay jurisdiction is not subject to the limitation in 5.3.4.2(2).
  - (5) 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.

### 5.3.5 Shoreline stabilization

~~The Hillsborough County Comprehensive Plan discourages hardening of shorelines in Hillsborough County. The EPC has adopted that policy and encourages property owners to plant native vegetation or use other environmentally beneficial methods to prevent shoreline erosion. All applications for shoreline stabilization measures prohibit the No filling of wetlands and other surface waters to obtain usable uplands shall be authorized under a MAIW authorization. During construction, all shoreline stabilization activities shall utilize erosion/turbidity control best management practices. Multiple shoreline stabilization activities are allowed on one property.~~

- (1) Native Shoreline. Proposals to re-grade and re-plant areas of minor erosion may be reviewed under this section. An application to stabilize an eroding shoreline with native vegetation must meet the following conditions:
  - (a) Only native, non-nuisance, vegetation may be planted. All vegetation must be identified by species and elevation in the project drawings.
  - (b) At a minimum, plants shall be spaced on two (2) foot centers.
  - (c) The applicant is responsible for removing non-native, nuisance vegetation from the native shoreline area.
  - (d) Re-grading shall be limited to the amount necessary to correct the erosion and provide an adequate slope for plant recruitment and vegetation.
  - (e) Biodegradable natural fibers 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.
- (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). New seawalls will be considered only in residential man-made canal systems where existing functioning seawalls exist on both immediately adjacent properties, ~~and~~ where any associated filling of wetlands or other surface waters is of nominal consequence, and the new wall follows the contour of the existing shoreline. ~~The applicant must also demonstrate the new seawall is necessary to prevent shoreline erosion.~~
- (b) Proposals for the repair or replacement of ~~functional~~ seawalls or similar structures within jurisdictional limits will be reviewed in accordance with the following criteria: the wall shall be located no greater than 18 inches waterward of the previous wall unless technical documentation is provided demonstrating additional space is required to repair the wall; and where no removal of non-nuisance vegetation or no additional filling of wetlands or other surface waters is necessary for the construction of the wall.
  - i. Where it does not meet the criteria for exemption contained in Section 5.4 A.(17);
  - ii. Including only backfilling or regrading needed to level the land immediately behind the replacement seawall;
  - iii. Where dredging is limited to the minimum necessary for the installation of the replacement seawall; and
  - iv. Removal of non-nuisance vegetation is of nominal consequence to the adjacent wetlands.

## 5.4 Exempt Activities

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. The

exemptions listed below shall not be cumulatively applied to a single structure and these exemptions do not imply exemption from obtaining all proper permits from other governmental agencies.

A. 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 permissible 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 of previously permitted rip rap 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 along natural shoreline areas that does not involve vegetation removal or re-grading of shoreline.
- (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:
  - i. 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;
  - ii. 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
  - iii. 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:
  - i. The material is limited to clean concrete, rock, brush, logs, or trees;
  - ii. The material is firmly anchored to the bottom of the waterbody;

- iii. The size of an individual fish attractor shall be limited to one quarter of an acre in area;
  - iv. 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;
  - v. The attractor shall be outside any posted navigational channels and shall not cause a navigational hazard;
  - vi. No material is placed on or in areas vegetated by native aquatic vegetation; and
  - vii. 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:
- i. The pipes or culverts do not exceed the original footprint of the existing pipe or culvert;
  - ii. The invert elevation shall not be changed; and
  - iii. 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.
  - iv. 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:
- i. 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;
  - ii. 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;
  - iii. The site is restored to pre-construction conditions within 48 hours of completion of use of the device; and
  - iv. 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:
- i. the face of the replacement wall shall be located no greater than 18 inches waterward from the face of the previous wall;
  - ii. 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
  - iii. where wetlands have not developed immediately landward of the seawall or similar structure.
- (18) Seawall cap replacement provided the following conditions are met:
- i. limited to flush standard seawall caps with a 6" -8" overhang;
  - ii. not applicable to cantilever or encapsulating seawall caps; and
  - iii. 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.

B. 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 History:**

Adopted: July 17, 2008 pursuant to Section 1-11.06, Rules of the EPC; amended May XX, 2021.

Effective: May XX, 2021

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