

COMMISSION

Mariella Smith, *Chair*
Pat Kemp, *Vice Chair*
Harry Cohen
Ken Hagan
Gwendolyn “Gwen” W. Myers
Kimberly Overman
Stacy White



Executive Director

Janet L. Dougherty

General Counsel

Ricardo Muratti

Meeting time

9:00 a.m.

COMMISSION AGENDA

May 20, 2021

Location

Virtual meeting via communications media technology – details below

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, and INVOCATION

2. ROLL CALL

3. CHANGES TO THE AGENDA

4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, or SEPARATE VOTE

5. RECOGNITIONS and PROCLAMATIONS

EPC Employee Retirement Recognition for:

- Frank Arcuri (Waste Division)
- Marvin Blount (Air Division)
- Hooshang Boostani (Waste Division)

6. PUBLIC COMMENT - *Each speaker is allowed 3 minutes unless the Commission directs differently. If you wish to provide public comment please submit the online [public comment form](#) at least 30 minutes prior to the start of the meeting.*

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

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b. Monthly Activity Report FY2021 (April 2021)	6
c. Pollution Recovery Fund Budget FY2021	9
d. Legal Case Notification	11
e. Action Plans Quarterly Update	13
f. Select Performance Measure Goals Quarterly Update	16

8. PUBLIC HEARING

a. Rule Adoption Public Hearing to consider amendments to Chapter V of the “Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands”	18
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9. REGULAR AGENDA

a. Hillsborough County’s Community Vulnerability Study - Report Results and Outcomes	35
b. Legislative Update	37
c. Executive Director’s Report	

10. DISCUSSION OF FUTURE AGENDA ITEMS

ADJOURN

Any person who might wish to appeal any decision made by the EPC 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.

This meeting will be available LIVE as follows: Spectrum - Channel 637, Frontier - Channel 22, Comcast - Channel 22, PC: <http://www.hcflgov.net/HTVlive>, and iOS: <http://65.49.32.149/iosvideo/ios.htm>



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.a.

Date of EPC Meeting: May 20, 2021

Subject: Approval of April 15, 2021 EPC meeting minutes

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Approve the April 15, 2021 EPC meeting minutes.

Brief Summary: Staff requests the Commission approve the meeting minutes from the Commission meeting held on April 15, 2021.

Financial Impact: No Financial Impact

List of Attachments: Draft copy of the April 15, 2021 EPC meeting minutes.

Background: None

APRIL 15, 2021 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, April 15, 2021, at 9:00 a.m., held virtually.

The following members were present: Chair Mariella Smith and Commissioners Harry Cohen, Ken Hagan (via telephone), Pat Kemp (via telephone), Gwen Myers, Kimberly Overman (via telephone), and Stacy White.

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND INVOCATION

Chair Smith called the meeting to order at 9:00 a.m. Commissioner White led in the pledge of allegiance to the flag and gave the invocation.

2. ROLL CALL

The Deputy Clerk called the roll and noted a quorum was present.

3. CHANGES TO THE AGENDA

Ms. Janet Dougherty, EPC Executive Director, noted there were no changes to the agenda.

4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, OR SEPARATE VOTE - None.

5. RECOGNITIONS AND PROCLAMATIONS - None.

6. PUBLIC COMMENT

Chair Smith and Attorney Beth Barthle, EPC, offered introductory remarks. Chair Smith called for public comment. The following individuals spoke: Mr. Charles Vickery, University of South Florida; Ms. Tammy Criollo, and Attorney Kevin Reali.

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

- a. Approval of EPC Meeting Minutes - February 18, 2021
- b. Monthly Activity Report Fiscal Year (FY) 2021 (February and March 2021)
- c. FY 2021 Pollution Recovery Fund Budget
- d. Legal Case Notification

THURSDAY, APRIL 15, 2021

- e. Renewal of three-year Microsoft License Agreement
- f. Tampa Bay Estuary Program Interlocal Agreement Renewal
- g. Granicus Website Agreement Revision

Commissioner White moved approval of consent, seconded by Commissioner Myers. Upon roll call vote, the motion carried seven to zero.

8. PUBLIC HEARING - None.

9. REGULAR AGENDA

- a. Section 9 Appeal, Manuel and Tammy Criollo v. Peder Johnsen and EPC, Case No. 20-EPC-015 - Final Order Proceeding

Chair Smith recognized EPC General Counsel Rick Muratti and Attorney Barthle, who gave a presentation. Following dialogue, **Commissioner White moved to adopt the hearing officer's findings of fact, make the appropriate conclusions of law, and render a final order in the above referenced case; to also correct the noted scriveners errors and to affirm the hearing officers recommendation upholding the issuance of the minor work permit for construction of the four-foot-wide access pier, seconded by Commissioner Cohen. Upon roll call vote, the motion carried seven to zero.**

Chair Smith sought a motion to authorize the Chair to execute a final order prepared by EPC counsel based on the EPC's ruling. **Commissioner Cohen so moved, seconded by Commissioner White. Upon roll call vote, the motion carried seven to zero.**

- b. Piney Point Gypsum Stack Update

Ms. Dougherty and Mr. Tom Ash, EPC, explained the item. Chair Smith inquired on further leakage and verified the best resources for citizens seeking further information. Commissioner Kemp asked about potential fish kills and the worst possible effects of the leak. Chair Smith requested a report on gypsum stacks in the County regarding vulnerabilities, operations, and similarities/differences to Piney Point. Dialogue continued. Responding to Chair Smith, Mr. Sam Elrabi, EPC, addressed injection wells and aquifer impacts. Commissioner Overman believed it would be appropriate to develop a risk assessment. Commissioner Cohen touched on available federal resources.

THURSDAY, APRIL 15, 2021

- c. Gopher Resource (Also Known As EnviroFocus Technologies, LLC)
Lead Smelting Plant Update

Ms. Dougherty introduced Mr. Sterlin Woodard, EPC, who explained the item.

Following remarks from Chair Smith, Commissioner Myers announced an upcoming public meeting to inform the surrounding community about lead poisoning. Discussion ensued.

- d. Legislative Update

Attorney Murrati provided the update.

- e. Executive Director's Report

Ms. Dougherty shared the report.

10. DISCUSSION OF FUTURE AGENDA ITEMS - None.

ADJOURN

There being no further business, the meeting was adjourned at 10:54 a.m.

READ AND APPROVED: _____
CHAIR

ATTEST:
CINDY STUART, CLERK

By: _____
Deputy Clerk

ag



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.b.

Date of EPC Meeting: April 15, 2021

Subject: Agency Monthly Activity Report

Agenda Section: Consent Agenda

Division: All five EPC Divisions

Recommendation: None. Informational report.

Brief Summary: The Agency-wide report represents the total number of select divisional activities that were tracked within a specific month.

Financial Impact: No financial impact.

List of Attachments: Agency monthly report for April FY21

Background: Select data that is associated with the EPC's five core functions; outreach, monitoring, compliance and enforcement, is tracked monthly by each Division. These monthly activity reports are then tallied to generate one final Agency-wide report.

EPC STAFF ACTIVITIES - AGENCY-WIDE
Monthly Activity Report
FY21

		<u>April</u>	<u>FISCAL YEAR TO DATE</u>
A.	<u>Core Function: Citizen Support & Outreach</u>		
1	Environmental Complaints Received (see attached Divisional breakdown)		see attached
2	Number of Presentations/Outreach Events	5	30
3	Citizen Support (walk-ins, file reviews, email/letter correspondence, etc.)	407	2703
B.	<u>Core Function: Air & Water Monitoring</u>		
1	Air Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	96.3%	N/A
2	Water Quality Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	98.6%	N/A
3	Number of Noise Monitoring Events	3	20
C.	<u>Core Function: Environmental Permitting</u>		
1	Permit/Authorization Applications Received	197	1231
2	Applications In-house >180 days	0	N/A
3	Permits/Authorizations Issued	163	1107
4	Petroleum Cleanup Cases	139	836
D.	<u>Core Function: Compliance Assurance</u>		
1	Compliance Inspections	337	2660
2	Compliance Test Reviews (NOTE: Wetlands reviews included under D.1)	105	893
3	Compliance Assistance Letters Issued	101	788
4	Warning Notices Issued	25	138
E.	<u>Core Function: Enforcement</u>		
1	New Cases Initiated	7	27
2	Active Cases	54	N/A
3	Tracking Cases	54	N/A



Citizen Support & Outreach

Environmental Complaints Received for FY2021

05/11/2021 03:18 PM

Environmental Complaints Received		Apr	FY2021
Agency Total		133	901
Air Division		42	328
General		6	37
Noise		19	209
Open Burning		12	48
Pollution		5	34
Waste Division		8	106
General		1	1
Solid & Hazardous Waste		7	86
SQG		1	18
Wastewater		1	1
Water Division		31	166
Dredge & Fill		1	1
General		3	12
Unauthorized Discharge/Disposal		4	25
Wastewater		15	92
Water Pollution/Quality		8	36
Wetlands Division		52	301
Dredge & Fill		28	85
General		5	5
Mangrove Impacts		6	35
Unauthorized Seawall/Dock		5	33
Water Pollution/Quality		9	9
Wetland Clearing		9	105
Wetland Flooding/Drainage		4	29



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #7.c.

Date of EPC Meeting: May 20, 2021

Subject: Pollution Recovery Fund Budget

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Informational Report Only

Brief Summary: The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund.

Financial Impact: No Financial Impact

List of Attachments: PRF Budget Spreadsheet

Background: The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund (PRF). The PRF funds are generated by monetary judgments and civil settlements collected by the EPC staff. The funds are then allocated by the Commission for restoration, education, monitoring, the Artificial Reef Program, and other approved uses.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 21 POLLUTION RECOVERY FUND
10/1/2020 through 4/30/2021**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 766,982	Artificial Reef	\$ 33,338	Minimum Balance	\$ 120,000	
Interest	\$ 678	Open Projects	\$ 439,936	Est. FY 22 Budget	\$ 33,338	
Deposits	\$ 136,783			Asbestos Removal	\$ 5,000	
Total	\$ 904,443	Total	\$ 473,274	Total	\$ 158,338	\$ 272,831

PROJECT	Project Amount	Project Balance
FY18 Projects		
Audubon Florida Invasive Removal	10131.102063.582990.5370.1293 \$ 50,000	\$ 45,611
TBW MacDill AFB Living Shoreline	10131.102063.582990.5370.1294 \$ 49,324	\$ 11,963
UF Small Farms For Clean Water	10131.102063.581990.5370.1295 \$ 15,750	\$ 14,269
	\$ 115,074	\$ 71,843
FY21 Projects		
TBW 2D Island Living Shoreline	10131.102063.582990.5370.1350 \$ 49,560	\$ 49,560
Eckerd College Microplastic Pollution	10131.102063.582990.5370.1351 \$ 49,450	\$ 49,450
Sun City Audubon Phase 2 Nature Trail	10131.102063.582990.5370.1352 \$ 20,000	\$ 20,000
USF Multidrug Resistant Bacteria	10131.102063.581990.5370.1353 \$ 50,000	\$ 50,000
Tampa P&R Ignacio Haya Park	10131.102063.581001.5270.1354 \$ 50,000	\$ 50,000
USF Fecal Source Detection	10131.102063.581990.5370.1355 \$ 50,000	\$ 50,000
ERI MacDill AFB Saltern Restoration	10131.102063.582990.5370.1356 \$ 37,000	\$ 37,000
ERI FWC Living Shoreline Demo Site	10131.102063.582990.5370.1357 \$ 42,000	\$ 42,000
UF/IFAS Florida Friendly Landscaping	10131.102063.581990.5370.1358 \$ 8,600	\$ 8,600
	\$ 356,610	\$ 356,610



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.d.

Date of EPC Meeting: May 20, 2021

Subject: Legal Case Notification

Agenda Section: Consent Agenda

Division: Legal Department

Recommendation: None. Informational.

Brief Summary: This notification is to assist Commissioners in identifying potential conflicts of interest that may exist and that may require disclosure prior to taking action in a quasi-judicial administrative matter. It is also intended to assist Commissioners in avoiding discussing matters with parties during administrative or civil litigation.

Financial Impact: Standard litigation costs are included in the Legal Department's operating budget, but any individual case may require a future budget amendment.

List of Attachments: None

Background: The EPC Legal Department primarily handles litigation in administrative and civil forums. A list of new litigation cases the EPC is involved in since the previous Commission meeting is provided below.

Administrative appeals (a/k/a administrative hearings, petitions, challenges, or Section 9 Appeals) involve challenges to agency actions such as permit application decisions or administrative enforcement actions (e.g. – citation or consent order). These proceedings are conducted before an appointed hearing officer who enters a recommended order after an evidentiary hearing. After the hearing officer issues the recommendation, the administrative appeal is transferred back to the Commission to render a final order. Acting in this quasi-judicial capacity, the Commission and all parties are subject to ex-parte communication restrictions. After receipt of an appeal or a request for an extension of time to file an appeal, the Commission should avoid discussing those cases. The below list of cases can assist Commissioners in identifying persons or entities that may present a conflict of interest. Certain conflicts may require the Commission to recuse themselves from voting on a final order. Please note, the Legal Department provides notice of sufficient appeals to the Commission via e-mail to assist in the conflict check process and as a reminder to limit communications; therefore, the Commission may have already received prior notification of the administrative case(s) listed below.

If the EPC becomes a party in civil litigation either through an approved Request for Authority to Initiate Litigation or by receipt of a lawsuit, the case will also be listed below. Any attorneys representing opposing party(ies) must communicate through the EPC counsel and should not contact the Commission directly. It also recommended that the Commissioners avoid discussing litigation prior to consulting with EPC counsel.

Please direct any calls or e-mails concerning administrative or civil litigation to the EPC Legal Department.

NEW LITIGATION CASES OPENED SINCE LAST EPC COMMISSION MEETING:

EPC Case No.	Date Opened	Case Type	Case Style	Division
21-EPC-006	05-11-2021	Administrative	Gregory Rhoney v. Gran Kaymen Way Investment Properties, LLC and EPC	Wetlands



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.e.

Date of EPC Meeting: May 20, 2021

Subject: 2021 First Quarter Action Plan Updates

Agenda Section: Consent Agenda

Division: All EPC Divisions

Recommendation: Informational Report

Brief Summary: For the past ten years, EPC staff has developed a series of action plans each year that help address various initiatives which support the Agency's strategic priorities. The quarterly updates for all open action plans are listed. Two new action plans are being considered for 2021.

Financial Impact: No additional funds required at this time. Monies for the individual action plans are paid out of the current budget, or will be brought to the Commission and requested separately as needed.

List of Attachments: Quarterly Update for Action Plans

Background: As part of the Agency's strategic planning process and philosophy of continuous improvement, staff has held periodic strategic planning sessions. These included input from the Commission and a broad range of EPC staff. Besides reviewing the priorities and guiding mission statements, staff also consider new initiatives to improve the EPC's effectiveness and efficiency. Since the Agency started this formal procedure in 2010, staff has completed over seventy of these initiatives.

The action plans were created to reflect the Agency's strategic objectives, and each initiative was described in an individual action plan with measurable goals. The attachment reflects the update as of the end of the first quarter of 2021 on the status of the action plans that remain open from previous years. Additional prospective topics for future action plans were discussed by EPC staff as part of the most recent strategic planning meeting in December 2020, and two new action plans were recommended at this time. One new action plan is intended to provide enhanced training for select EPC staff, including participation in Yellow Belt efficiency improvement coursework. The second action plan involves an updated review and mapping of the current Agency processes to identify any potential improvements.

The owners of select action plans may be scheduled to present an overview of their project to the Commission at regularly scheduled EPC Commission meetings.

Quarterly Update for 2019 Action Plans

Strategic Objective	Action Plan	2019 -2020 Action Plan Goals	Status
Efficient customer service and fluent agency staff	Interdepartmental Familiarization	Set up committee with agency members from different divisions	Complete. Action plan committee members include Michael Gile (Wetlands), Jeff Sims (Air), Nita Osterman (Water), Yamil Dias (MIS), Gabby Nataline and Ron Cope (Waste)
		Conduct Interviews with supervisors and managers to determine most useful cross familiarization methods	Complete. Action plan committee has identified and agreed on methods for cross familiarization based on staff interviews
		Determine innovative ways to encourage staff members' self-education	Complete. Committee has agreed to permanent desktop icon with resources, bi-weekly interactive intranet activities, quarterly luncheon meetings dedicated to each division, mandatory new hire training organized by direct supervisor.
		Create/distribute survey monkey to allow measurable success of action plan	Completed. Survey results have been received and compiled.
		Set deadlines for supervisors/managers to complete resources-develop standards for mandatory new hire training	Completed. Guidance has been formulated and has been distributed to all Managers and Supervisors.
		Conduct quarterly meetings dedicated to each division	Ongoing. First and second division-specific familiarization session were held in November 2020 and February 2021. Feedback from staff was positive. Next information session to be held in June of 2021.
		Electronic methods of interdepartmental familiarization	Ongoing. This task is being formulated with members of MIS.
		Distribute second survey monkey	Ongoing. Mid-point survey was conducted in April of 2021 to determine success of action plan. 67 staff members participated. 100% of participants stated then felt more familiar with EPC's divisions and jurisdiction. 97% of participants stated they felt more comfortable handling citizen complaints.
		Measure success of action plan	Ongoing: Action Plan success will be evaluated upon completion of the above tasks. This task has been affected/delayed due to the EPC's public health related facility closure and alternative staff work procedures.

Quarterly Update for 2019 Action Plans

Strategic Objective	Action Plans	2019 Year End Goal	Status
Continuous Improvement / Technology Review	5.1 Technology Assessment and Improvement	Develop and deploy employee survey for Assess users current experience with technology at EPC.	April 2020 – MIS staff received technology requests from each division which included all staff needs.
		Conduct key infrastructure assessment (network, VDI, servers, GIS applications etc.)	Completed. Loxia Technologies was brought in for consultation and provided New Network Topology that will be implemented in 2 phases. Phase 1 is completed. Phase 2 is in progress.
		Conduct technology needs assessment for each division.	TBD – scheduled for completion Dec 2019
		Cost analysis	Completed. Loxia Technologies provided new Network Topology in 2 phases. Phase 1: \$4,744.00 and Phase 2: \$2,590.00
		Produce technology improvement proposal report	Proposal report received and technology recommendations on server/building needs implemented with Loxia Technologies.
		Implement approved some/all of the proposed technology improvements.	Due to pandemic, needs of staff changed to having to work remote. All staff evaluated for remote needs and laptops/surface pros purchased. By April 2020 staff were able to work remote.
		Post -improvement survey (after 6 months of equipment use)	TBD – Scheduled for March 2021
		Action Plan Closeout.	TBD – Scheduled for closeout May 2021



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.f.

Date of EPC Meeting: May 20, 2021

Subject: Select Performance Measure Goals for 2021

Agenda Section: Consent Agenda

Division: Executive Director Report

Recommendation: Informational Report

Brief Summary: As part of the EPC staff's strategic planning, the Agency measures key activities and set goals for 2021. These are tabulated and periodically presented to the Commission in the consent agenda.

Financial Impact: No Financial Impact

List of Attachments: Table Titled 2021 Goals

Background: The Agency measures performance for all five of its core functions. These core functions include permitting, compliance assurance, citizen support & outreach, enforcement, and ambient air & water quality monitoring. As part of the Agency's annual evaluation, staff sets goals for select activities and reports them periodically to the Commission. This is an integral part of the continuous improvement required by the Agency's strategic planning.

2021 Goals

Core Function	Measure	Pre-Sterling Year (2009)	2018	2019	2020	2021 (1st Qtr)	2021 Goal
Permitting	Average Time to Issue an Intent for State Construction Permits	57 days	16 days	19 days	28 days	24 days	Less Than or Equal to 30 days
	Average Time to Issue an Intent for Tampa Port Authority Permits	56 days	50 days	51 days	56 days	59 days	Less Than or Equal to 60 days
	Average Time EPC Permits were In-house	21 days	26 days	34 days	36 days	41 days	Less Than or Equal to 30 days
Compliance	Timely Resolution of Lower Level Non-Compliance Cases	92%	95%	92%	97%	96%	Greater Than or Equal to 90%
Environmental Complaints	Timely Initiation of Investigation	99% in 5 Days	98% in 3 Days	96% in 3 Days	96% in 3 Days	95% in 3 Days	Greater Than or Equal to 90% in 3 Days
Enforcement	Timely Initiation of Enforcement	73%	93%	92%	98%	92%	Greater Than or Equal to 90%



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 8.a.

Date of EPC Meeting: May 20, 2021

Subject: Rule Adoption Public Hearing to consider amendments to the Basis of Review, Chapter V

Agenda Section: Public Hearing

Division: Wetlands Division

Recommendation: Approve adoption of rule amendments to Chapter V of the “Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands” (BOR) and authorize staff to make typographic corrections as needed.

Brief Summary: Pursuant to EPC Act and Chapter 1-2, Rules of the EPC, a Noticed Public Hearing shall be held by the Commission to approve or amend a rule. EPC staff drafted proposed amendments to Chapter V of the BOR to provide clarity to applicants who wish to obtain authorization for activities in wetlands, to codify current practices, and to amend the rule for consistency with other State and local government agency regulations.

Financial Impact: De minimis decrease in permit fee collection.

List of Attachments: Proposed Amended Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands: Chapter V – Miscellaneous Activities in Wetlands (Draft version dated May 5, 2021)

Background: On July 17, 2008, the EPC Commission adopted the “Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands” (BOR). The BOR was adopted by the Commission to supplement the main EPC Wetlands Rule (Chapter 1-11) and to expand on the criteria to qualify for certain wetland permits. Chapter V of the BOR is entitled “Miscellaneous Activities in Wetlands” (MAIW) and it explains criteria to qualify for an MAIW permit under EPC Rule Section 1-11.10. MAIW permits are for those activities that constitute development within wetlands or other surface waters yet are considered to have a minor impact on those wetland or other surface water functions thus qualifying them for a permit under Section 1-11.10. An MAIW permit does not require traditional wetland mitigation but may have conditions such as replanting and erosion control. Examples of MAIWs include but are not limited to nuisance vegetation control, swimming access, boat ramps, fences, docks, marginal structures, elevated boardwalks, and shoreline stabilization. Chapter V of the BOR has not been updated since its inception in 2008 and revisions are merited.

The proposed rule amendments clarify existing language, codify existing criteria for regulated activities, and create consistency with other governmental agency regulations. Since the BOR rule was adopted in 2008, the EPC Wetlands Division has received two delegations of authority from other agencies addressing these similar activities in wetlands or other

surface waters. This revision references the delegations as they relate to the MAIW program. These delegations provide residents one-stop permitting at EPC for many of these activities that also qualify for an MAIW. Many of the rule revisions are proposed in an effort to improve one-stop permitting and make the permitting process clearer to applicants. Additionally, in recent years various State agencies have revised their regulations in certain areas such as the Environmental Resource Permitting program and aquatic plant control programs that address activities that also fall under an MAIW permit review.

Over the past twelve years utilizing the current BOR, certain decisions and practices have been applied to accomplish the permitting process for these nominal impacts. These rule amendments clarify ongoing practices to afford the applicant a better understanding of the rule criteria, saving time and increasing permitting efficiency. The increased specificity improves and streamlines the process so that applicants will have more detailed guidance on what activities qualify for an MAIW permit or exemption.

Staff have conducted three public workshops with stakeholders to review the proposed amendments and seek feedback. Two workshops were held on March 31, 2021 (mid-day and evening) and one on April 22, 2021. The rule drafts, notice of workshops, and notice of opportunity to send comments were provided via multiple group e-mails, social media postings, and multiple website postings over the past three months. The few comments received during the workshop period have been considered by staff for incorporation in the proposed rule amendments.

Pursuant to noticing requirements in the EPC Act and Chapter 1-2, Rules of the EPC, this public hearing was noticed in the newspaper on May 5, 2021. The notice of the public hearing and the final draft rule were also posted on the EPC website on May 5, 2021.

EPC staff requests the Commission conduct a public hearing, approve adoption of the rule amendments, and in the event any typographical errors are discovered after the hearing, make the necessary non-substantive corrections, prior to filing the rule with the Clerk.

Draft - May 5, 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, open water access, and construction/location of facilities. Native tree species removal is prohibited under this section. The width of all facilities such as docks and boat ramps are considered a portion of the 25 foot wide access area. ~~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~~, thus reducing the swim or open water access area width along the shoreline. To lessen adverse impacts to natural shoreline features it may be advisable to co-locate facilities. Vegetation clearing beyond the littoral fringe shall be limited to the minimum amount necessary to allow for watercraft to access the waterbody.

5.2.3 Mulched Paths

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

5.2.4 Mowing

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

5.2.5 Whole Lake Treatment

A. Introduction.

“Whole lake treatment” constitutes “clearing” of surface waters, including lakes and all other surface waters, under the definition of “development” as defined in Section 1-11.02(2)(b), Rules of the EPC. However, whole lake treatment conducted in open-water portions of the surface water and in accordance with this Section will qualify as an activity of nominal consequence to the surface water under Section 1-11.10(1)(b), Rules of the EPC. 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, Rules of the EPC and Section 5.2.1 and Section 5.2.2, Basis of Review. 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 surface waters shall be exempt provided the activity meets all conditions below and all conditions in Section 5.2.5(D) and (E), and the activity is reviewed and approved by other appropriate agencies as necessary.

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

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

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

(c) The species of targeted vegetation; and

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

(4) This exemption from EPC authorization does not authorize access to other person's private property nor is it intended to provide any property interest in or easement to access the waterbody.

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

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

C. 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 waterbody or own property immediately adjacent to the waterbody. Persons authorized to represent multiple riparian owners such as, but not limited to, governmental agencies and officers of homeowners associations may submit an application on behalf of the riparian owners.

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

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

(4) 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 also be subject to enforcement if unauthorized/non-targeted vegetation or other natural resources are impacted due to improper application of the herbicide treatment.

(5) If the EPC finds that immediate, serious danger to the public health, safety, welfare, or the environment requires emergency action, it is authorized to suspend, restrict, or limit the scope of the permitted activity by emergency order.

5.3 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, issued by Port Tampa Bay (with an associated EPC environmental review), incorporates all comments provided by EPC as specific or general conditions or is issued by the EPC pursuant to any Interlocal Agreement with Port Tampa Bay. 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 ~~enumbered~~ 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. If the required depth is not present and alternative configurations and dredging cannot be accommodated, the applicant shall provide documentation which demonstrates the proposed mooring area shall have adequate water depth to avoid scouring, prop dredging, and other causes of turbidity and substrate damage.

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

(6) The structure's terminal platform must be located waterward of or beyond the vegetative littoral fringe. Terminal platform is defined in this rule as the part of the structure that is connected to and located at the terminus of the access walkway and is for loading and unloading of vessels or used to conduct water dependent activities. Water dependent activity is defined in this rule as an activity which can only be conducted on, in, over, or adjacent to, water areas because the activity requires direct access to the water body for transportation, recreation, energy production or transmission, or source of water and where the use of the surface waters is an integral part of the activity. 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. The terminal platform shall be minimized to the greatest extent practicable, and shall be located, designed, and/or constructed so that it causes the least environmentally adverse impact.

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

(8) No dredging, filling, clearing, or scouring shall be allowed except for the setting of pilings. During construction activities, the area of temporary disturbance to vegetation shall be limited to two feet on either side of the structure. 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

(9) No more than one structure may be authorized per single-family residence on one parcel of land. The term "structure" as used within Section 5.3.4.(9), includes docks, floating docks, piers, wharfs, marginal docks, observational platforms, and walkways. The following configurations are deemed one structure and must meet all rule criteria collectively: two unconnected access walkways utilized for a single vessel slip area; and a floating dock permanently attached to a piling supported dock. Two structures may be authorized if one of the following exceptions are met:

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

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

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

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

(10) 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, or as case law allows.~~ However, an applicant may construct a dock on property they do not own provided they obtain written authorization from the property owner or where public records do not identify any private owner of submerged lands.

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

5.3.4.1 Observation Platforms

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

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

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

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

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

5.3.4.2 Marginal Structures

A marginal structure is defined as a structure that runs parallel along the waterbody shoreline or seawall 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 and open water 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 and open water access area.

(2) 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 and open water access area, in accordance with Section 5.2.2, it is encouraged to co-locate facilities within the swim access area. If a proposed marginal structure cannot be located within the existing 25-foot swim and open water access area, an area equivalent to the width of the proposed marginal structure, within the existing swim and open water access area, shall be allowed to naturally revegetate.

(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 and open water 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.

(6) Marginal structures shall not be located within a riparian mangrove fringe.

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 will be considered only in ~~requires~~ requires a demonstration of shoreline erosion that cannot be corrected by means of native vegetation or the use of rip rap, or is required to maintain the integrity of an upland structure(s). A new seawall shall be limited to residential man-made canal systems where existing functioning seawalls exist on both immediately adjacent properties, ~~and where a~~ Any associated filling of wetlands or other surface waters shall be ~~is~~ of nominal consequence and the new wall shall follow the contour of the existing shoreline while avoiding native trees. ~~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, which do not meet the exemption criteria contained in Section 5.4 A.(17), will be reviewed in accordance with the following criteria:

(i) the face of the replacement wall shall be located no greater than 18 inches waterward of the previous wall unless technical documentation is provided demonstrating additional space is required to repair the wall;

~~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.~~

(ii) backfilling or regrading shall be limited to only the minimum amount necessary to level the land immediately behind the replacement seawall;

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

(iv) the removal of vegetation shall be of nominal consequence to the wetlands and other surface waters.

5.4 Exempt Activities

A. The activities meeting the limitations and restrictions below are exempt from EPC Wetlands permitting. However, if located in, on, or over Port Tampa Bay jurisdictional submerged lands, they may be subject to a separate authorization under the chapter 95-488, Laws of Florida and pursuant to any existing Interlocal Agreement, as applicable. 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.

B. Activities exempt from permitting:

(1) Re-decking of any existing structure.

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

(3) Replacement of a previously permitted dock, boardwalk, marginal structure, observation platform in the same configuration including the re-decking, replacement of pilings, hardware, and the new installation of new 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 structures are those structures constructed on or before May 14, 1985.

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

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

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

(a) The derelict vessel case has been completed as specified in section 705.103, F.S., and has been entered into the Statewide Derelict Vessel Database

maintained by the Florida Fish and Wildlife Conservation Commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The invert elevation shall not be changed;

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

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

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

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

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

yards;

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

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

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

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

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

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

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

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

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

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

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

(c) not intended for expanded walkway seawall caps.

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

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

C. Conditions applicable to all exemptions:

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

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

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

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

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

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

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

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

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

Chapter History:

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DRAFT



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.a.

Date of EPC Meeting: May 20, 2021

Subject: Hillsborough County's Community Vulnerability Study - Report Results and Outcomes

Agenda Section: Regular Agenda

Division: Air Division

Recommendation: Informational Report

Brief Summary: Hillsborough County commissioned and worked in collaboration with University of South Florida's (USF) Florida Center for Community Design and Research, USF College of Public Health and the Planning Commission, to conduct a comprehensive Community Vulnerability Study (CVS) to address the requirements of SB 1094 'Peril of Flood', and long-range planning options and recommendations for the County's coastal and low-lying areas in preparation for future flooding and potential sea-level rise. The goal of the CVS is to assist the County with meeting local, State, and federal planning requirements to develop a comprehensive, risk-based assessment that identifies vulnerabilities in Hillsborough County's built, social, and ecological environments for flood and sea-level rise scenarios. Hillsborough County staff and Planning Commission staff will be in attendance to present the study and report results.

Financial Impact: No Financial Impact

List of Attachments: None

Background: Hillsborough County commissioned and worked in collaboration with USF's Florida Center for Community Design and Research, College of Public Health and Planning Commission to conduct a comprehensive Community Vulnerability Study (CVS) to address Senate Bill 1094 'Peril of Flood', and long-range planning options and recommendations for the County's coastal and low-lying community areas in preparation for future flooding and potential sea-level rise. The CVS will aid the County with meeting local, State and federal planning requirements for the continuous threat of flooding and longitudinal sea level rise with a focus on understanding the consequences, impacts, strategies and implementation plans needed to not only meet regulatory requirements but to bolster preparations to save life and property in future times of crisis.

A priority task for the project was to develop recommendations for comprehensive plan policy to meet, and possibly exceed, the requirements associated with SB 1094: Peril of Flood. The bill requires all municipalities to address six goals related to flooding, including reducing coastal flooding risks, removal of coastal properties from FEMA flood zones, site development techniques and best practices for flood mitigation, and construction and coastal development. The CVS developed a comprehensive, risk-based assessment that identifies vulnerabilities in Hillsborough County's built, social, and ecological

environments for flood and sea-level rise scenarios. Additionally, the project recommends relevant adaptation strategies and emergency and disaster management risk mitigation plans to reduce the risk of loss of life and property in the event of varying levels of flooding and storm water intrusion.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.b.

Date of EPC Meeting: May 20, 2021

Subject: Legislative Update on Environmental Bills

Agenda Section: Regular Agenda

Division: Legal Department

Recommendation: Informational Report

Brief Summary: The regular session of the Florida Legislature adjourned on April 30, 2021. EPC staff will provide updates on various environmental and administrative bills that may impact the EPC or may be of interest to the EPC.

Financial Impact: No Financial Impact

List of Attachments: None

Background: The regular session of the Florida Legislature convened on March 2, 2021 and adjourned on Friday, April 30, 2021. EPC staff reviews environmental and administrative bills to determine if they may impact the EPC's functions and budget. The Commission approved a legislative strategy (EPC Policy No. 2007-02) on March 15, 2007, that gives staff and the Chair continuing direction to monitor, comment on, and lobby, among other things, bills that impact the functions of the EPC.

Although EPC tracks numerous bills, included below is a summary of just a few notable bills regarding environmental regulation or administrative matters that may impact EPC functions or may be of interest:

BUDGET:

Petroleum Tanks Cleanup Budget

Petroleum Tanks Cleanup funding levels were maintained thanks in part to a special allocation from Federal CARES Act. \$75M was allocated plus an additional \$50M in Federal funds.

Piney Point

In response to the recent breach and discharge at the Piney Point facility in Manatee County, \$100M of funds from the Federal CARES Act was allocated to expedite the closure of the facility.

Septic to Sewer upgrades

\$10M was allocated for governments to apply for funding to make septic to sewer upgrades and \$500M for septic and other wastewater improvements.

PASSED:

Relief from Burdens on Real Property Rights

HB 421

Sponsored by Rep. Persons-Mulicka, Rep. McClain, Sen. Rodrigues, and Sen. Albritton.

Florida law currently provides a lesser remedy than a constitutional taking claim via the Bert Harris Act. It allows a property owner to sue a local government if a law the local government passed and applied to the property inordinately burdens the owner's property rights. House Bill 421 revises the Bert Harris Act by expanding what can trigger a lawsuit. Among other things, the bill states that the mere adoption of a rule (not applying it to a specific property) could allow for the initiation of litigation. Additionally, the bill revises the definition of "land" to extend property rights protection to mineral and other subsurface rights.

Home-based Businesses

HB 403

Sponsored by Rep. Giallombardo and Senators Perry and Baxley.

This pre-emption bill authorizes home-based businesses to operate in residentially zoned areas, prevents local governments from licensing them, and restricts local governments from regulating such businesses. While the EPC opposes further attempts at pre-emption of local governments, it is important to note for environmental regulatory purposes that a bill amendment near the end of the session clarified that the home-based business can be regulated by local governments for activities that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors. Also, local governments are not pre-empted from regulating the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids at these home-based businesses.

Reclaimed Water

SB 64

Sponsored by Senator Albritton and Representative Maggard

Senate Bill 64 requires that by November 2021 domestic wastewater utilities that dispose of effluent, reclaimed water, or reuse water by surface water discharge submit to the DEP for review and approval a plan for eliminating nonbeneficial surface water discharges by January 1, 2032. The bill provides for exceptions if the elimination is not feasible. The bill also provides incentives to local governments and developers for the implementation of graywater technology in residential developments.

Statewide Flooding and Sea Level Rise Resilience

SB 1954

Sponsored by Representative Busatta Cabrera and Senators Rodrigues, Garcia, and Rodriguez

The bill creates the Resiliency Florida program within the DEP and a Resilient Florida Trust Fund. Among other things, the bill provides funding and criteria for local governments for the costs of vulnerability assessments, community resilience planning, and projects to adapt critical assets (i.e. – infrastructure, utilities, communications facilities, parks, cultural resources, medical facilities, law enforcement facilities, etc.) to the effects of sea level rise and flooding.

Farming Operations

SB 88

Sponsored by Senator Brodeur, Rules Committee, Environmental and Natural Resources Committee, and Co-Sponsored by Senator Baxley, Albritton, and Perry.

Senate Bill 88 narrows a farm's liability for nuisance lawsuits and establishes an enhanced burden of proof threshold (clear and convincing). A claimant who brings a nuisance claim must now be located within one-half mile of the alleged nuisance activity. The bill adds that particle emission is a farm operation, thus recognizing that burning is a standard farming operation. The bill was signed by the Governor and becomes law July 1.

Legal Notices

HB 35

Sponsored by Rep. Fine, Rep. Grieco, and Senator Rodrigues

House Bill 35 updates the requirements of newspapers that are qualified to publish legal notices. Additionally, it authorizes the publication of specified governmental agency notices on newspaper websites in lieu of print publication. The local government governing body would have to make a finding that electronic newspaper publication was in the public interest and that residents would have sufficient internet access, prior to utilizing electronic only newspaper publication. Moreover, the local government would have to publish weekly in the print edition that they no longer use the print edition for legal notices. A previous draft of the bill would have allowed governments to publish on their own websites, but that language was removed. This bill was signed by Governor on May 7, 2021, and becomes effective January 2022.

FAILED:

Preemption of Tree Pruning, Trimming, and Removal

SB 596 / HB 6023

Sponsored by Senator Stewart and Sen. Cruz and Representative Eskamani and Rep. Learned

This bill proposed to repeal section 163.045, Florida Statutes. This is the 2019 law that pre-empts local governments from regulating tree pruning, trimming and removal of “dangerous” trees on “residential” properties if a certified arborist or licensed landscape architect determines the tree is dangerous. The bills died.

Tree Pruning, Trimming, or Removal on Residential Property

HB 1167 / SB 1396

Sponsored by Rep. Snyder and Senator Gruters

These bills propose to revise the definition of residential property to include trailer parks and mobile home parks. The current law applies to removing and trimming dangerous trees on residential properties, but this would expand and clarify that MHPs are residential, not commercial. The bills died.

Residential Home Protection (Tree Pre-emption)

SB 916

Sponsored by Senator Brodeur

This bill proposes to modify the tree trimming pre-emption law in section 163.045, Florida Statutes. This bill modifies the threshold for the trimming or removal activity from “dangerous” instead to “unacceptable risk.” The bill would create a more standardized method to determine the unacceptable risk by requiring the application of American National Standard Institute (ANSI) standards. Additionally, the bill would clarify that it only applies to single-family detached home on a separate lot. The bill died.

Soil and Groundwater Contamination

SB 1054 / HB 705

Sponsored by Senator Broxson and Rep. Andrade

This bill proposed to amend a provision of the brownfields law to address site cleanup for perfluoroalkyl and polyfluoroalkyl substances (PFAS). A Senate staff analysis describes PFAS as follows:

“... a group of thousands of man-made compounds developed to provide oil and water repellency, chemical and thermal stability, and friction reduction. Perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are the most common and the best-studied of these compounds. PFAS were widely used since the 1950’s, with applications in many industries, including the aerospace, semiconductor, medical, automotive, construction, electronics, and aviation industries, as well as in consumer products (e.g., carpets, clothing, furniture, outdoor equipment, food packaging) and firefighting applications. While U.S. manufacturers have voluntarily phased out use of the chemicals, they persist in the environment, particularly at fire colleges, airports, and military installations.”

PFAS-only contaminated sites are problematic for the Brownfields program and redevelopment of contaminated property. If a property is only contaminated by PFAS, they may not qualify for the Brownfields program because there is no exceedance of a cleanup target level (CTL) as current State rules have no CTL for PFAS, only screening levels. Among other things, the bill includes changes for the following items that would allow them to qualify for the program:

1. Rulemaking to establish cleanup target levels for PFAS compounds;
2. Liability protection to parties working with the FDEP on PFAS sites;
3. Approval of municipal code as institutional controls for site closure; and
4. Requiring FDEP to notify the Water Management Districts of contaminated areas.

These PFAS bills died.

Blue Green Algae Task Force and Septic Tanks

SB 1522

Sponsored by Environment and Natural Resources Committee and Senator Stewart

Among other things, the bill would have required periodic inspection of septic tanks and required the Department of Health to administer this inspection program. This bill died.