

**DRAFT – June 14, 2024**

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**BASIS OF REVIEW**

**For**

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

***CHAPTER 3 REVISION – Section 3.3.  
CHAPTER 5 REVISION – Sections 5.1, 5.3.5, and 5.4***

## CHAPTER III - CONDITIONS FOR ISSUANCE OR DENIAL

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### 3.3

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

**3.3.2 Cumulative Impacts:** To supplement the criteria regarding cumulative impacts in Section 1-11.09(2), an applicant must provide reasonable assurance that a regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters within the same drainage basin as the regulated activity for which a permit is sought. The impact on wetlands and other surface waters shall be reviewed by evaluating the following criteria:

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

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

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

- i. Projects that have wetland impact authorization from the EPC or pending applications for wetland impact authorization from EPC.
- ii. Activities that are under review, approved, or vested pursuant to Section 380.06, F.S., or other activities regulated under Part IV of Chapter 373, F.S., which may reasonably be expected to be located within wetlands or other surface waters, in the same drainage basin, based upon the comprehensive plans,

adopted pursuant to Chapter 163, F.S., of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations;

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

iv. The cumulative impact evaluation is conducted using an assumption that reasonably expected future applications with like impacts will be sought, thus necessitating equitable distribution of acceptable impacts among future applications.

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

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

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

## CHAPTER V - MISCELLANEOUS ACTIVITIES IN WETLANDS

### 5.1 Introduction

Pursuant to Section 1-11.09(1)(c), Rules of the EPC, Miscellaneous Activities in Wetlands (MAIW) are those activities that constitute development under Section 1-11.02(2)(b) yet are considered to have minor impact on wetland or other surface water functions. Applications for authorization of these types of impacts will be reviewed pursuant to Section 1-11.10, Rules of the EPC. Applicants do not need to demonstrate that the impact is necessary for reasonable use of a property, but the impacts must be minimized to the greatest extent practicable and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impact possible. Development authorized under Chapter V does not require a cumulative impact consideration described in Section 1-11.09(2), Rules of the EPC. Mitigation pursuant to Section 1-11.08 is not necessary for activities that qualify under Section 1-11.10, Rules of the EPC but the approval may include conditions to offset adverse impacts, such as replanting to ensure erosion control or ensure the area is properly re-vegetated. A Wetland Impact Review pursuant to Section 1-11.07, Rules of the EPC, shall be required for all proposed activities which do not meet the specified criteria contained herein. The issuance of an MAIW authorization or qualifying for an exemption from an MAIW does not convey to the applicant or create in the applicant any property right or any interest in real property, nor does it authorize any entrance upon or activities on a property that is not owned or controlled by the applicant. Eligible MAIW impacts include but are not limited to the following activities:

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### 5.3.5 Shoreline stabilization

The EPC encourages property owners to plant native vegetation or use other environmentally beneficial methods to prevent shoreline erosion. All applications for shoreline stabilization measures prohibit the filling of wetlands and other surface waters to obtain usable uplands. During construction, all shoreline stabilization activities shall utilize erosion/turbidity control best management practices. Multiple shoreline stabilization activities are allowed on one property.

(1) ~~Native Based Solutions~~ Living Shorelines.

(a) ~~Native~~ Natural Shoreline. Proposals to re-grade and re-plant areas of minor erosion ~~may be with native vegetation are reviewed under this section.~~ An application to stabilize an eroding shoreline with native vegetation must and shall meet the following conditions:

- (i) Only native, non-nuisance, vegetation may be planted. All vegetation must be identified by species and elevation in the project drawings.
- (ii) At a minimum, plants shall be spaced on two (2) foot centers.
- (iii) The applicant is responsible for removing non-native, nuisance vegetation from the ~~native~~ natural shoreline project area.

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

(v) Biodegradable natural 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.

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

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

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

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

b. The ~~landward toe of the breakwater is within no less than 3 feet of depth of water at the Mean or Ordinary High Water elevation, and~~ located as close to the planting area as necessary to provide protection for the plantings.;

c. The breakwater top height shall be at least six inches more than the Mean or Ordinary High Water elevation and shall be visibly marked;

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

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

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

g. The breakwater shall be placed in units so that there is at least one opening measuring at least five feet in width located every 75 linear

feet along the breakwater, with a minimum of one opening, to allow the flow of water and the passage of fish and aquatic wildlife.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) For the duration of the permit, maintenance of the shoreline shall be conducted to ensure the establishment of native wetland vegetation and Living Shoreline activities remain in the permitted footprint.

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

(2) **Rip Rap Installation.** The use of rip rap revetment may be permitted pursuant to this section for those natural areas that have demonstrated significant, ongoing shoreline erosion where natural shoreline stabilization is not feasible or with

already hardened shorelines. An application to install rip rap revetment must meet the following conditions:

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

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

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

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

**(3) Seawalls.**

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

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

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

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

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

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

## 5.4 Exempt Activities

A. The activities meeting the limitations and restrictions below are exempt from EPC Wetlands permitting. However, if located in, on, or over Port Tampa Bay jurisdictional submerged lands, they may be subject to a separate

authorization under the chapter 95-488, Laws of Florida and pursuant to any existing Interlocal Agreement, as applicable. These exemptions do not imply exemption from obtaining all proper permits from other governmental agencies.

B. Activities exempt from permitting:

(1) Re-decking of any existing structure.

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

(3) Replacement of a previously permitted dock, boardwalk, marginal structure, observation platform in the same configuration including the re-decking, replacement of pilings, hardware, and the new installation of new 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 and permitted Living Shorelines pursuant to Section 5.3.5(1), provided that it does not extend beyond its previously permitted dimensions.

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

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

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

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

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

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

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

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

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

(b) All work is done in a manner that, to the greatest extent practicable, avoids additional dredging or filling, grounding or dragging of vessels, and damage to submerged resources such as seagrass beds,



oyster beds, coral communities, mangroves, other wetlands, and live bottom; and

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

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

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

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

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

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

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

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

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

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

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

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

(b) The invert elevation shall not be changed;

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

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

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

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

(a) the device's purpose is solely to collect scientific or technical data, such as staff gages, tide and current gages, meteorological stations,

water recording, biological observation and sampling, and water quality testing and improvement. Parshall flumes and other small weirs installed primarily to record water quantity and velocity are authorized, provided the amount of fill is limited to 25 cubic yards;

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

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

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

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

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

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

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

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

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

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

(b) not applicable to cantilever or encapsulating seawall caps; and (c) not intended for expanded walkway seawall caps.

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

(20) Maintenance dredging conducted by Port Tampa Bay, provided the work is conducted in accordance with the maintenance dredging exemption in Section 62330.051, F.A.C.

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

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

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

(c) disposal of removed vegetation is placed within an acceptable upland area with the property owner's authorization and situated to

prevent the return of these materials back into the wetland or other surface waters;

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

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

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

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

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

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

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

(c) Boreholes suspected to have penetrated a confining layer shall be grouted from the bottom up by means of a tremie pipe and the severed materials shall be removed from the wetland or other surface waters.

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

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

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

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

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

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

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

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

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

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

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

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

C. Conditions applicable to all exemptions:

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

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

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

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

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

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

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

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

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