# STATE 404 PROGRAM
# APPLICANT'S HANDBOOK

**This Handbook, including Appendices A and B only is incorporated by reference in subsection 62-331.010(5), F.A.C.**

**Effective [date]**

## FOR:

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**



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## 1.0 Introduction

The Florida Department of Environmental Protection ("Department" or "DEP") developed this Applicant's Handbook to help persons understand the rules, procedures, standards, and criteria that apply to the State 404 Program under Part IV of Chapter 373 of the Florida Statutes (F.S.).

The Department administers and implements the State 404 Program. In the event the Department seeks and receives approval from EPA pursuant to 40 CFR 233.16 to modify the program to delegate implementation of the State 404 Program to Florida's five Water Management Districts ("Districts"), the Districts may then implement the program with Department oversight. The State 404 Program Applicant's Handbook refers to these entities collectively as "Agencies" and also refers to one or more water management districts as "District" or "Districts" (capitalized), respectively. The term "district" (lower case) generally refers to the main or field offices of either the Department or District.

The Districts are:

- Northwest Florida Water Management District (NWFWMD)
- Suwannee River Water Management District (SRWMD)
- St. Johns River Water Management District (SJRWMD)
- Southwest Florida Water Management District (SWFWMD)
- South Florida Water Management District (SFWMD)

The primary State 404 Program rules are adopted by DEP as Chapter 62-331 of the Florida Administrative Code (F.A.C.). This Applicant's Handbook is incorporated by reference in subsection 62-331.010(5), F.A.C., and therefore operates as a rule of the Agencies.

If the Department delegates implementation of the State 404 Program to the Districts, the responsibilities of those Agencies will be divided in accordance with Operating and Delegation Agreements incorporated by reference in Chapter 62-113, F.A.C., accessible at: https://floridadep.gov/ogc/ogc/content/operating-agreements. Until such delegation occurs, the Department will be responsible for reviewing and acting upon requests for verification of exemption from, and notices and applications for, State 404 Program permits.

The State 404 Program is a separate permitting program from the Environmental Resource Permitting program (ERP) under Chapter 62-330, F.A.C., and agency action for State 404 Program verifications, notices, or permits shall be taken independently from ERP agency action. The applicant may choose to have the State 404 Program and ERP agency actions issued concurrently to help ensure consistency and reduce the need for project modifications that may occur when the agency actions are issued at different times.

Chapter 62-331, F.A.C., references Chapter 62-330, F.A.C., ERP Applicant's Handbook Volume I ("Volume I"), and Chapter 62-345, F.A.C., where requirements under Section 404 of the Clean Water Act (CWA) overlap with existing ERP requirements. State 404 Program rules, which include Chapter 62-331, F.A.C., and the 404 Handbook, will control where there is conflict between these and the referenced ERP rules, including Volume I, and other state laws.

## 1.1 State-assumed Waters

Section 404 of the CWA provides that the U.S. Army Corps of Engineers (Corps) is the agency authorized to issue CWA section 404 dredge and fill program permits for activities within waters of the United States. However, the CWA includes provisions that allow a state to assume administration of a 404 program in certain waters (state-assumed waters). The CWA does not define state-assumed



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waters; rather, it describes waters that a state cannot assume and for which jurisdiction remains with the Corps (retained waters). State-assumed waters then are all waters of the United States that are not retained waters. Retained waters are defined in section 2.0 of this Handbook and listed in Appendix A. Activities within retained waters will generally still require a state ERP authorization and a separate federal authorization from the Corps. To provide certainty, streamlining, and efficiency, the State will consider that any wetlands or other surface waters delineated in accordance with Chapter 62-340, F.A.C., that are regulated under Part IV of Chapter 373, F.S. could be considered Waters of the United States, and will treat them as if they are, unless the applicant clearly demonstrates otherwise.

See section 4.1 of this Handbook for examples showing how to determine whether a project is in state-assumed or retained waters.

## 1.2 Using this Handbook

Requirements of section 404 of the CWA overlap significantly with the ERP program. To eliminate redundancy and streamline reviews, the State 404 Program rules and this Handbook reference existing ERP rules and Handbook sections wherever possible. Projects within state-assumed waters that are not otherwise exempt from permitting will require both a State 404 Program authorization and an ERP authorization. Processing of both authorizations will begin concurrently upon receipt of an application for a project, except where the activities requiring a State 404 permit are proposed to occur in a later phase of a project that will take more than the maximum permit duration allowed under federal law to complete. In such cases an applicant may apply for the State 404 permit at a later date. Activities that require both an ERP and a State 404 permit shall not commence before both permits are obtained.

This Handbook will assist applicants and staff in conducting the concurrent reviews, outlines the different timeframes for review, and encourages applicants to waive ERP timeframes in favor of State 404 Program timeframes, where applicable, to ensure consistency (see section 5.0). This Handbook also outlines any requirements in addition to those required under the ERP program and identifies those ERP rules that do not apply to State 404 Program permits.

## 1.3 Other Authorizations and Relationship to Other Governmental Entities

Issuance of a permit or verification of qualification for an exemption or general permit under Chapter 62-331, F.A.C., does not:

- Convey or create to the person any property right, or any interest in the real property;
- Authorize any entrance or activities on property that is not owned or controlled by the person; or
- Relieve persons from obtaining all other required licenses, permits, and authorizations under applicable state, federal, or local statute, rule, or ordinance. Persons are advised to obtain all required authorizations prior to commencement of activities required under the State 404 program.

Additional information on the distribution of public notice to, and coordination with, other governmental agencies is discussed in section 5.2 of this Handbook.

### 1.3.1 Additional Authorizations from the Corps of Engineers

Some projects may require an additional authorization from the Corps. More information about these authorizations, briefly described below, may be found online in the Jacksonville District Regulatory Division Sourcebook, or by contacting your local Corps office.



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#### 1.3.1.1 Section 408 Authorization

The Corps has many civil works projects within the state of Florida. Examples include dams, levies, navigation, and flood control projects. Some of these projects are located within or in proximity to state-assumed waters. Many such projects are located within residential communities. Parties other than the Corps may need to alter or occupy the projects and their associated lands. Reasons for alteration may include project improvements, relocation of part of the project, or installing utilities or other non-project features. In accordance with Section 14 of the Rivers and Harbors Act (RHA) (33 U.S.C. Part 408) (Section 408), the Corps must review requests for modification of federal projects by non-federal interests. If Section 408 authorization is needed, such authorization must be obtained from the Corps prior to project commencement.

#### 1.3.1.2 Authorization Under Section 10 of the Rivers and Harbors Act

In accordance with Section 10 of the Rivers and Harbors Act (RHA), the Corps has regulatory jurisdiction over all obstructions and alterations of navigable waters of the United States, the construction of any structures in or over navigable waters of the United States, and any work affecting the course, location, condition, or capacity of navigable waters of the United States, as defined in 33 C.F.R. Part 329. This includes permit authority under Section 10 of the RHA for those waters based solely on historic use (Section 10 historic waters). While the Corps retains authority over Section 10 historic waters, upon the effective date of the State 404 Program, the State assumes authority over Section 404 permitting within Section 10 historic waters. Therefore, discharges of dredged or fill material in Section 10 historic waters may require a separate Section 10 permit from the Corps in addition to the State 404 permit.

Some projects within Section 10 waters may qualify for authorization under the State Programmatic General Permit (SPGP). More information about SPGP is available in the Jacksonville District Regulatory Division Sourcebook or on the Agency website.

### 1.3.2 Other Authorizations

Additional authorizations may be required from the Department, Water Management District, or other federal, state, and local agencies. These include, but are not limited to:

- Environmental Resource Permit (ERP)
- State-owned Submerged Lands Authorization
- National Pollutant Discharge Elimination System (NPDES) Authorization
- Well Construction Permit
- Consumptive Use or Water Use Permit
- Works of the District Permit
- Generic Permit for Discharge of Produced Groundwater
- Coastal Construction Permit
- Local building permits

### 1.3.3 Endangered Species Authorizations

Compliance shall be required, as applicable, with any requirements resulting from consultation with, or technical assistance by, the Florida Fish & Wildlife Conservation Commission (FWC), the US Fish & Wildlife Service, and the National Marine Fisheries Services (NMFS) for permits reviewed under the State 404 Program.



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## 1.4 Use of Regulatory Guidance Letters

Regulatory Guidance Letters (RGLs) issued by the Corps and/or EPA to assist with implementation of Section 404 of the CWA may be also be used by the state to assist with implementation of the State 404 Program, when current and applicable. Regulatory Guidance Letters, or sections of letters, that conflict with other applicable state rules, statutes, agreements, or processes shall not be used. Current RGLs can be found in the Corps' Jacksonville District Regulatory Division Sourcebook.

## 2.0 Definitions and Terms

(a) Where the definitions in Chapters 62-330 and 62-345, F.A.C., do not conflict with this section, those definitions shall be used.

(b) The following additional definitions and terms below are used solely for purposes of Chapter 62-331, F.A.C., and this Handbook.

1. "Act" or "CWA" means the Clean Water Act (also known as the Federal Water Pollution Control Act or FWPCA) Pub. L. 92–500, as amended by Pub. L. 95–217, 33 U.S.C. 1251, *et seq.*
2. "Activity" for the purposes of the State 404 Program only, means "discharge of dredged material" and/or "discharge of fill material" as those terms are defined in 40 CFR § 232.2 (see Appendix B). The terms "dredge", "fill", "dredging", and "filling", when used within Chapter 62-331, F.A.C., or this Handbook shall be interchangeable with "activity" as defined herein.
3. "Adaptive Management" means the development of a management strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of compensatory mitigation projects and guides modification of those projects to optimize performance. It includes the selection of appropriate measures that will ensure that the aquatic resource functions are provided and involves analysis of monitoring results to identify potential problems of a compensatory mitigation project and the identification and implementation of measures to rectify those problems.
4. "Adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other state-assumed waters by man-made dikes or barriers, natural river berms, beach dunes, and the like are considered adjacent wetlands.
5. "Administratively complete" means an application that contains all the items required under the public noticing requirements of Rule 62-331.060, F.A.C.
6. "Agency" means the Department of Environmental Protection ("Department"), or the water management districts ("Districts"), where the Districts are delegated authority to implement the State 404 Program by the Department, and such delegation has been approved by EPA in accordance with 40 CFR Part 233.
7. "Aquatic environment" and "aquatic ecosystem" mean state-assumed waters, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals. (Also see "Natural systems" definition in Volume I, section 2.0)
8. "Best management practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of wetlands and other surface waters from permitted activities. BMPs include methods, measures, practices, or design and performance standards which facilitate compliance with Chapter 62-331, F.A.C., and prevent violation of state water quality standards. Examples include, but are not limited to, placement of turbidity curtains or silt fence, stabilizing slopes, limiting work to appropriate weather and light conditions, and clearly marking work and staging areas in the field.



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9. "Buffer" means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.
10. "Burial Resources" means human remains, meaning all physical remains of a human body of a person of American Indian ancestry, even if in fragmentary form unless it is determined that the human remain had been freely given or naturally shed by the individual from whose body it was obtained, such as hair made into ropes or nets or individual teeth. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, are considered as part of that item and as a cultural resource item.
11. "Compensatory Mitigation" means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.
12. "Compensatory Mitigation Project" means compensatory mitigation implemented by the permittee as a requirement of a permit (i.e., permittee-responsible mitigation), or by a mitigation bank or in-lieu fee program.
13. "Condition," as it is used in the mitigation section of this Handbook, means the relative ability of an aquatic resource to support and maintain a community of organisms having a species composition, diversity, and functional organization comparable to reference aquatic resources in the region.
14. "Contaminant" means a chemical or biological substance in a form that can be incorporated into, onto or be ingested by and that harms aquatic organisms, consumers of aquatic organisms, or users of the aquatic environment, and includes but is not limited to the substances on the 307(a)(1) list of toxic pollutants. The list of toxic pollutants is incorporated in paragraph 62-620.100(3)(k), F.A.C., and reproduced in Appendix D of this Handbook.
15. "Functions," as used in the mitigation section of this Handbook, means the physical, chemical, and biological processes that occur in ecosystems.
16. "Historical Resources Assessment Survey" or "Cultural Resources Assessment Survey" means a survey of the project site which meets the requirements set forth in Chapter 1A-46, F.A.C., Archaeological and Historical Report Standards and Guidelines.
17. "Historic Resource," "Historic Property," or "Cultural Resource" means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archeological value, and folklife resources. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archeological value, or any part thereof, relating to the history, government and culture of the state. (Source Section 267.021(3), F.S.).
18. "Impact" or "Adverse impact", as those terms relate to compensatory mitigation review, means adverse effect.
19. "In-kind" means a resource of a similar structural and functional type to the impacted resource.
20. "In-lieu fee program" means a program involving the restoration, creation, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for 404 permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu fee program sponsor. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.
21. "Interagency Review Team" (IRT) means an interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the Corps district engineer on, the establishment and management of a mitigation bank or an in-lieu fee program.



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22. "Material permit modification" and "material changes in the scope of the project" mean, for the purposes of applying Section 373.4146(5), F.S., only those modifications or changes, including changes to any long-term planning document appended to a permit pursuant to section 5.3.2., that result in a significant increase in the total project environmental impact, including but not limited to wildlife impacts, or a significant increase in the impact to state-assumed or retained waters.
23. "Mean high tide line," for purposes of identifying retained waters, means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.
24. "Mitigation Bank," for the purposes of the State 404 Program only, means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by State 404 Program permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.
25. "Mixing zone" means a limited volume of water serving as a zone of initial dilution in the immediate vicinity of a dredge or fill activity where receiving water quality may not meet quality standards or other requirements otherwise applicable to the receiving water.
26. "Off-site," for purposes of the mitigation section of this Handbook, means an area that is neither located on the same parcel of land as the impact site, or on a parcel of land contiguous to the parcel containing the impact site.
27. "On-site," for purposes of the mitigation section of this Handbook, means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to the impact site.
28. "Ordinary high water mark," for purposes of identifying retained waters, means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
29. "Out-of-kind" means a resource of a different structural and functional type from the impacted resource.
30. "Performance standards" are observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.
31. "Permittee-responsible mitigation" means an aquatic resource restoration, creation, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.
32. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials not covered by the Atomic Energy Act, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The legislative history of the CWA reflects that ''radioactive materials'' as included within the definition of ''pollutant'' in section 502 of the CWA means only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated under the Atomic Energy Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant", are radium



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and accelerator produced isotopes. See Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1 (1976).

33. "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes.
34. "Practicable alternative" means other choices available and capable of being carried out after taking into consideration cost, existing technology, and logistics considering overall project purposes, and may require an area not owned by the applicant which could reasonably have been obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.
35. "Project" means all activities which the applicant plans to undertake pursuant to the entire scope of the project and includes all avoidance, minimization, and mitigation measures proposed by the applicant. To provide for a holistic review of projects that will take more than the maximum permit duration allowed under federal law to complete, the term includes all phases thereof, which phases may be temporal or geographic.
36. "Project area" or "Project site" means that portion of the state-assumed waters where specific dredging or filling activities are permitted and consist of a bottom surface area, any overlying volume of water, and any mixing zones. In the case of wetlands on which surface water is not present, the project area consists of the wetland surface area.
37. "Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions. (see "Restoration")
38. "Reference aquatic resources" or "Reference site" are a set of aquatic resources that represent the full range of variability exhibited by a regional class of aquatic resources as a result of natural processes and anthropogenic disturbances.
39. "Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function but does not result in a gain in aquatic resource area. (see "Restoration")
40. "Restoration," for the purposes of the State 404 Program, means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.
41. "Retained Waters" means those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, including wetlands adjacent thereto. The Corps will retain responsibility for permitting for the discharge of dredged or fill material in those waters identified in the Retained Waters List (Appendix A), as well as all waters subject to the ebb and flow of the tide shoreward to their mean high water mark that are not specifically listed in the Retained Waters List, including wetlands adjacent thereto landward to the administrative boundary. The administrative boundary demarcating the adjacent wetlands over which jurisdiction is retained by the Corps is a 300-foot guide line established from the ordinary high water mark or mean high tide line of the retained water. In the case of a project that involves discharges of dredged or fill material both waterward and landward of the 300-foot guide line, the Corps will retain jurisdiction to the landward boundary of the project for the purposes of that project only.
42. "Riparian areas" are lands adjacent to streams, rivers, lakes, and estuarine-marine shorelines. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality.

43. "Service Area" means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.
44. "Services" mean the benefits that human populations receive from functions that occur in ecosystems.
45. "Special aquatic sites" means sanctuaries and refuges under state and federal laws or local ordinances, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.
46. "Sponsor" means any public or private entity responsible for establishing, and in most circumstances, operating a mitigation bank or in-lieu fee program.
47. "State-assumed Waters" or "Assumed Waters" means those waters as defined in Section 373.4146(1), F.S.
48. "Technically complete" means an application where each application item is adequate to allow the Agency to determine if the proposed project complies with Chapter 62-331, F.A.C. If a project requires both an ERP and a State 404 Program authorization, the State 404 Program review shall not be considered complete until the ERP review is complete. This is to satisfy the requirement for reasonable assurance that State water quality standards and coastal zone consistency requirements will be met.
49. "Temporal loss" or "time lag" is the time that passes between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site.
50. "Tribe" means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation.
51. "Watershed approach" means an analytical process for making mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of mitigation projects that will benefit the watershed and offset losses of aquatic resource functions and services caused by activities authorized by Section 404 permits. The watershed approach may involve consideration of landscape scale, historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources when determining mitigation requirements for Section 404 permits.
52. "Watershed plan" means a plan developed by federal, tribal, state, and/or local government agencies or appropriate non-governmental organizations, in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, creation, enhancement, and preservation. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans.

## 3.0 Regulated Activities

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### 3.1 Exemptions



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A permit is not required under Chapter 62-331, F.A.C., for activities listed under 40 CFR § 232.3 (Appendix B), subject to the limitations described therein. Notice to the Agency is not required to conduct an exempt activity, except where the activity also requires an ERP authorization. Activities that qualify for an exemption pursuant to 40 CFR § 232.3 and an ERP exemption that does not require prior notice to the Agency may be conducted without notice.

If a person desires verification that an activity qualifies for an exemption the request shall be submitted in accordance with Rule 62-331.040, F.A.C.

### 3.1.1 Agriculture and Forestry Exemptions

The exemptions applying to agriculture and forestry activities under 40 CFR § 232.3 are different from the exemptions available under ERP. The exemptions for agriculture in Section 373.406(2), F.S., Rules 62-330.051, and 62-330.0511, F.A.C., allow new activities within wetlands and other surface waters, while the State 404 Program exemption under 40 CFR § 232.3 may require a permit for such activities. Please read the requirements of both program's exemptions carefully when deciding if an activity is exempt or needs a permit. If you are unsure, contact your local Agency office or apply for a verification of exemption.

## 3.2 Permits Required

Rule 62-331.020, F.A.C., describes activities that require a permit. The types of permits available are general permits and individual permits. These are described below.

### 3.2.1 General Permits

General permits authorize activities specified in Rules 62-331.200 and subsequently numbered rules in Chapter 62-331, F.A.C.

General permits are available for categories of similar activities which have been determined to cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment.

State 404 Program general permits are reviewed by DEP and EPA for re-authorization every five years. This means that general permits are only valid during that five-year period beginning at the time they are authorized (or re-authorized). If a permittee cannot perform the work in the time before the general permit expires, a new general permit or, if the general permit is not re-authorized, an individual permit will be required.

The Agency reserves the right to require an individual permit for any activity covered by a general permit if the Agency determines that the activity will have more than a minimal adverse effect, either individually or cumulatively, on the environment.

The Agency may administer, upon agreement with the Corps, Corps regional general permits that are still effective upon the date of assumption for projects within assumed waters, where appropriate, until the date that they expire. The Department shall keep a list of any regional general permits administered by the state after the date of assumption.

The same general permit cannot be used more than once for the same "single and complete" project, unless specifically stated within the general permit. "Single and complete", for the purposes of the general permits under Chapter 62-331, F.A.C., is defined below.



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**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single state-assumed water (i.e., a single waterbody) at a specific location. For linear projects crossing single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of general permit authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. If the Agency determines that multiple "single and complete" projects will cause significant adverse cumulative impacts, an individual permit shall be required for the project(s).

**Single and complete non-linear project:** For non-linear projects, the term ''single and complete project'' is defined as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see below).

**Independent utility:** A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate, single and complete projects with independent utility.

#### 3.2.1.1 General Permits Not Requiring Notice of Intent to use a General Permit

Notice to the Agency is not required for those activities covered under a general permit where notice is not specifically required in the language of the general permit, or by Rule 62-331.200, F.A.C. Special attention should be made by the permittee to ensure that all of the conditions for the general permit are met, including any requirements for coordination with other agencies or tribes.

If you are unsure whether your project requires submittal of a notice of intent, it is recommended that you contact your local Agency office for assistance or submit a notice for review in accordance with Rule 62-331.200, F.A.C.

#### 3.2.1.2 General Permits Requiring a Notice of Intent to Use a General Permit

General permits requiring notice of intent shall be submitted to the Agency as described in section 4.2 of this Handbook and processed by the Agency in accordance with section 5.3, below.

#### 3.2.1.3 Frac-out Plan

A frac-out plan is required for projects involving horizontal directional drilling or jack-and-bore activities under the general permit in Rule 62-331.215, F.A.C. The purpose of the plan is to minimize adverse, unauthorized, impacts to state-assumed waters in case of a drilling fracture. The plan shall contain, at a minimum, the following information:

- Proposed methods to prevent violations of water quality standards (BMPs)
- Measures used to prevent and detect frac-out during the drilling operation
- Release procedures



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- A drilling mud containment plan
- Agency notification contact information



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### 3.2.2 Individual Permits

Regulated activities that are not exempt under subsection 62-331.020(1), F.A.C., (40 CFR § 232.3, Appendix B) and that do not qualify for a State 404 Program general permit will require an individual permit. Individual permits are so named because they require individual, case-by-case review by the Agency. Individual permits are subject to the public notice requirements of Rule 62-331.060, F.A.C., and will be processed in accordance with Rule 62-331.052, F.A.C., and section 5.0 of this Handbook.

## 4.0 Preparation and Submittal of Applications and Notices

Applications and notices shall be prepared and submitted as described below.

**1**

**2**

**3**

**4**

### 4.1 Determining if a Project is within State-Assumed or Retained Waters

Projects within retained waters go to the Corps for processing, and projects within state-assumed waters go to the State Agency for processing.

The definition of retained waters, as stated in section 2.0, above, is:

"Those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, including wetlands adjacent thereto. The Corps will retain responsibility for permitting for the discharge of dredged or fill material in those waters identified in the Retained Waters List (Appendix A), as well as all waters subject to the ebb and flow of the tide shoreward to their mean high water mark that are not specifically listed in the Retained Waters List, including wetlands adjacent thereto landward to the administrative boundary. The administrative boundary demarcating the adjacent wetlands over which jurisdiction is retained by the Corps is a 300-foot guide line established from the ordinary high water mark or mean high tide line of the retained water. In the case of a project that involves discharges of dredged or fill material both waterward and landward of the 300-foot guide line, the Corps will retain jurisdiction to the landward boundary of the project for the purposes of that project only.

The Corps also retains permitting authority for projects within "Indian country" as that term is defined at 18 U.S.C. § 1151 (provided below):

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means



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(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

A list of "Indian country" can be found online in the Corps' Jacksonville District Regulatory Division Sourcebook.

For the purposes of determining retained or state-assumed waters, the boundary of a mitigation bank, excluding the service area, shall be considered the project boundary, even if only a portion of the bank requires a dredge and fill permit under Section 404 of the CWA.

The following illustrations demonstrate how to determine the administrative boundary of retained waters:



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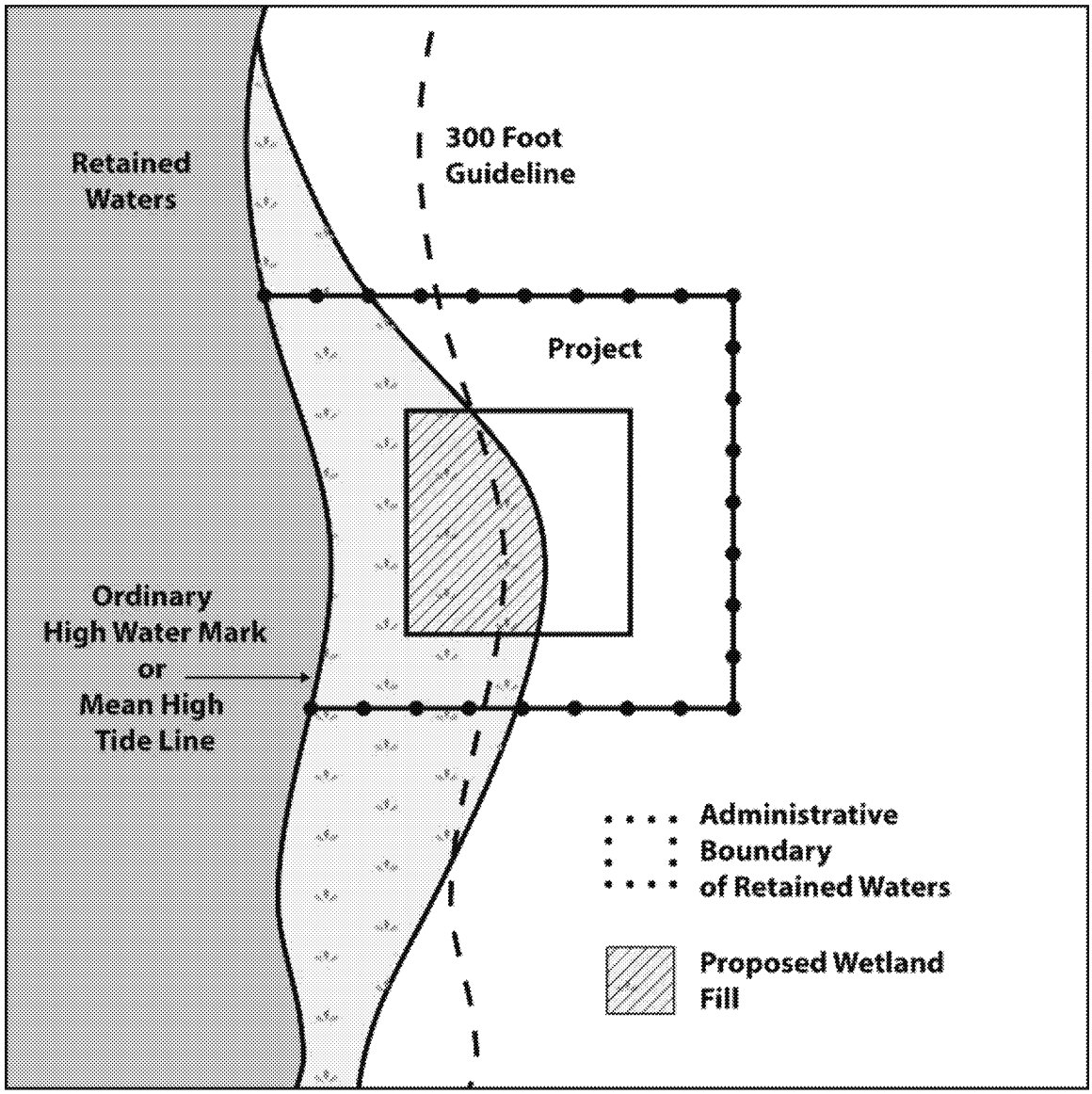
Example 1: Project with dredge and fill activity both waterward and landward of the 300-foot guide line. The 404 permit application would be processed by the Corps.



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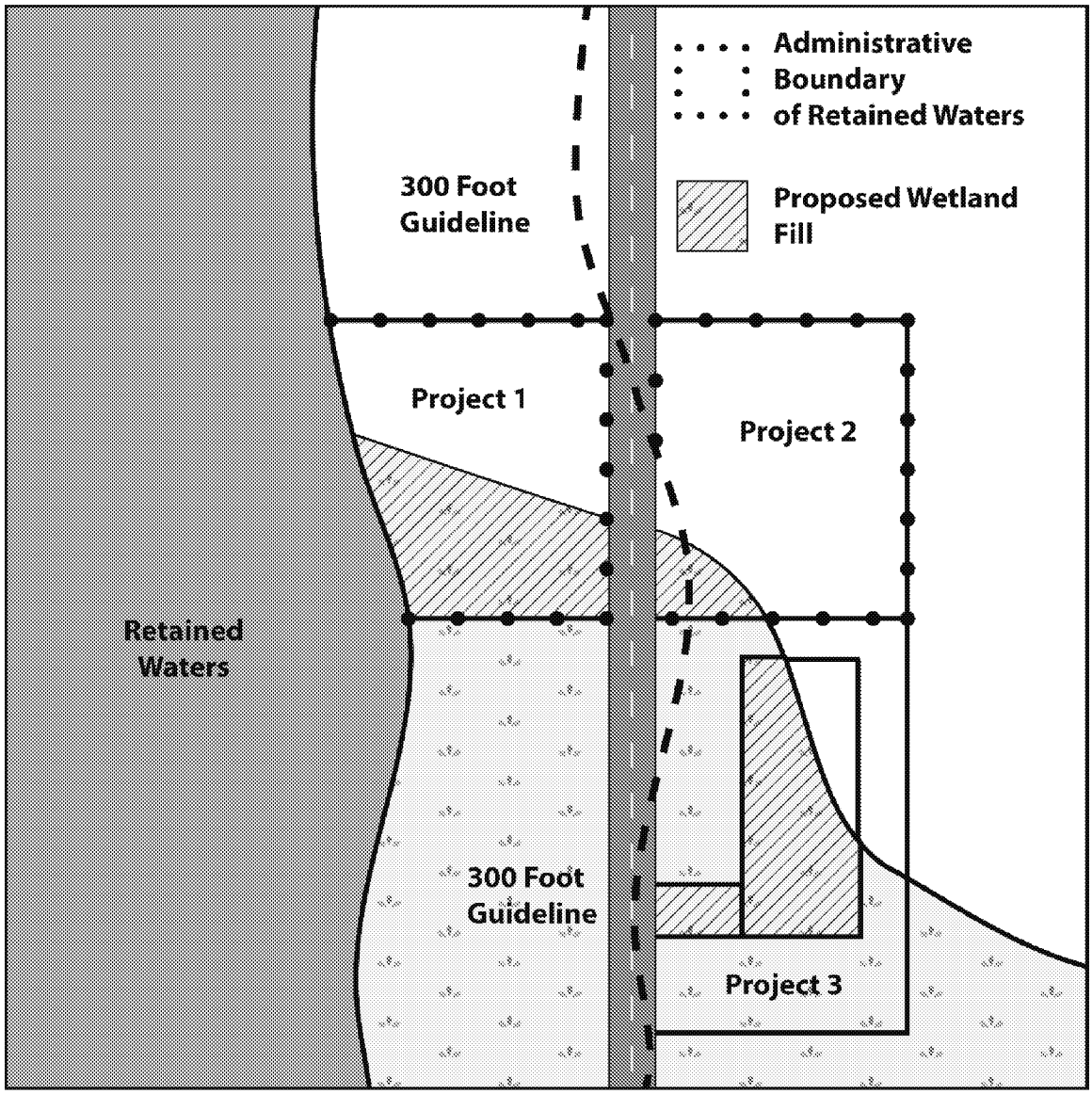
Example 2: Projects with dredge and fill activity and project boundaries waterward and/or landward of the 300-foot guide line. Projects 1 and 2 are retained and the 404 application will be processed by the Corps. Project 3 does not include any dredge or fill activities waterward of the 300 foot guide line, and therefore is not retained by the Corps, and the 404 application will be processed by the state Agency.



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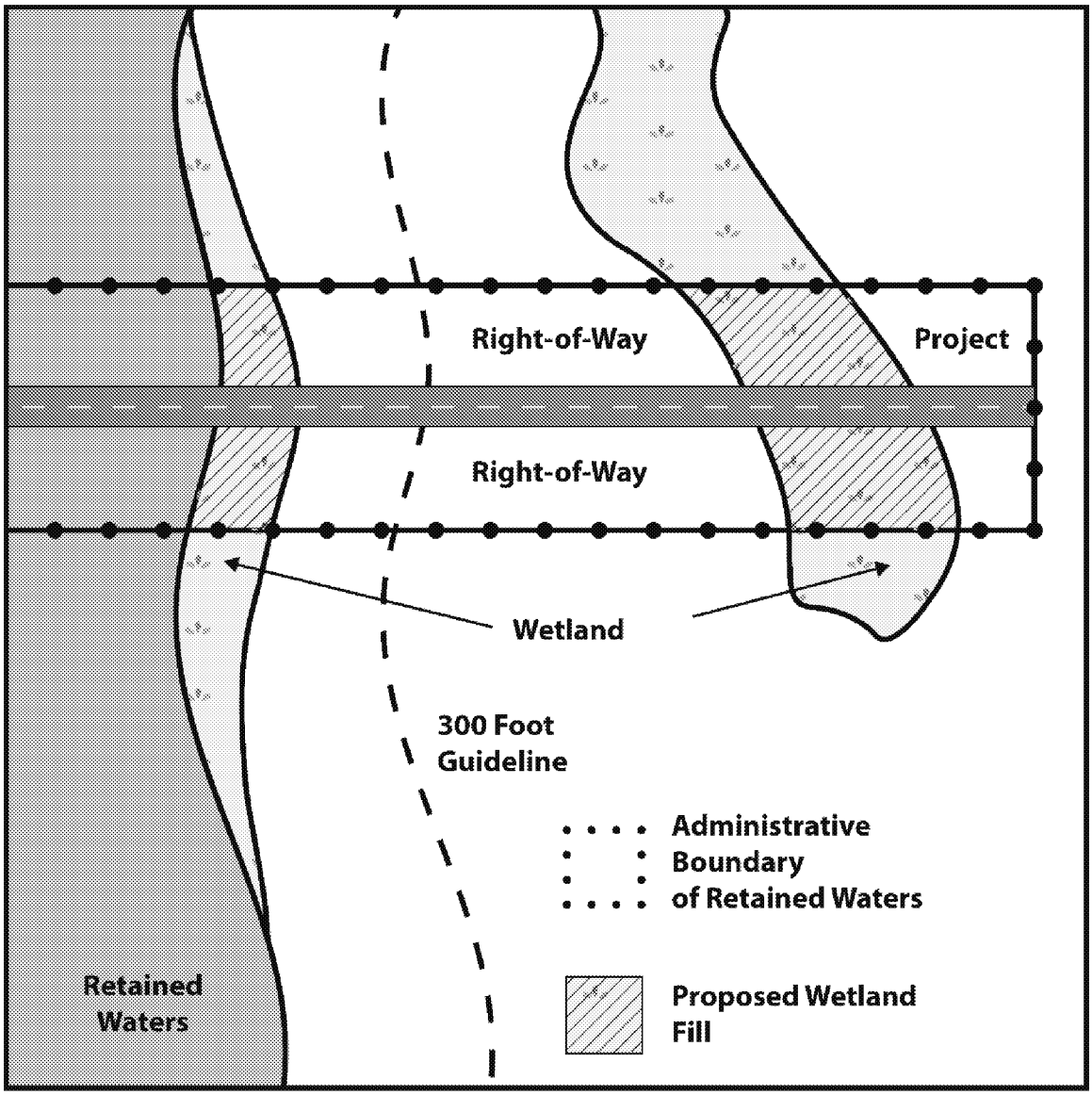
Example 3: A linear project including dredge and fill activities waterward of the 300 foot guide line. Linear projects may sometimes be miles long, but if there are dredge or fill activities waterward of the 300-foot guide line within the project boundary, the project is within retained waters, and the 404 application will be processed by the Corps.




## 4.2 Pre-application Conferences

Applicants are encouraged to have a pre-application phone call, meeting (on-site or in the office), or other conference with the applicable Agency staff, prior to submitting an application or notice. Pre-application conferences may help streamline processing steps and potential time delays by assisting the applicant to understand such things as:

(a) The need for a permit or potential qualification for an exemption or general permit, including a determination of what combination of ERP/State 404 Program authorizations will be required;

(b) Which Agency or Agencies will be responsible for the review of the application or notice;



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(c) How to prepare the application or notice, including availability of on-line tools that may assist in completing it, and how to use the long-term conceptual planning process in section 5.3.2 of this Handbook;

(d) Information required by the Agency to evaluate an application or notice, including such things as wetland delineations, resources that may be affected, alternatives analysis, surface water data, and other hydrologic, environmental, or water quality data;

(e) Application processing, public notice, and evaluation procedures;

(f) The need for a pre-application on-site meeting;

(g) Avoiding adverse impacts that may prevent the proposed activity from meeting applicable permitting or review standards and criteria;

(h) The existence of available project alternatives;

(i) Measures that can be taken to reduce or eliminate adverse impacts, and the appropriateness of compensatory mitigation to offset any remaining adverse impacts; and

(j) The potential for the project to impact tribal waters or tribal cultural resources (see section 5.2.6 for more information about tribal resources and coordination).

See Appendix A of Volume I for Agency contact information.

## 4.3 Forms and Submittal Instructions

Applicants are encouraged to use the e-Permitting and electronic portals of the Agencies to submit most applications and notices as discussed below. Appendix A of Volume I contains the internet addresses of the Agencies.

Application and notice forms available:

- Form 62-330.050 – Request for Verification of an Exemption
- Form 62-330.402(1) – Notice of Intent to Use an Environmental Resource and/or State 404 Program General Permit
- Form 62-330.060 – Application for Individual and Conceptual Approval Environmental Resource Permit, State 404 Program Permit, and Authorization to Use State-Owned Submerged Lands

Table 4.3, below, is a matrix identifying which application form should be submitted to the Agency depending on what combination of ERP and State 404 Program authorizations are needed.



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| Authorizations Needed | 404 Exemption | 404 General Permit | 404 Individual Permit |
|---|---|---|---|
| **No ERP** | Use form 62-330.050 | Use form 62-330.402(1) | Use form 62-330.060 |
| **ERP Exemption** | Use form 62-330.050 | Use form 62-330.402(1) | Use form 62-330.060 |
| **ERP General Permit** | Use form 62-330.402(1) | Use form 62-330.402(1) | Use form 62-330.060 |
| **ERP Individual Permit** | Use form 62-330.060 | Use form 62-330.060 | Use form 62-330.060 |
| **ERP Conceptual Approval Permit** | Use form 62-330.060 | Use form 62-330.060 | Use form 62-330.060 |

*Table 4.3 – Application form matrix.*

## 4.4 Processing Fees

There shall be no processing fees for State 404 Program verifications, notices, applications, or permits.

## 5.0 Processing of, and Agency Action on, Applications and Notices

Where the processing timeframes and agency action procedures in Chapter 62-330, F.A.C., Applicant's Handbook Volume I, and Chapter 120, F.S., do not conflict with the requirements of the State 404 Program, those processing timeframes shall be used, as outlined in this Handbook. Several procedures and rules for agency action are required by Section 404 of the CWA, but not by ERP, causing conflict between some State 404 Program and ERP program processes and timeframes.

For example, when a project requires both an ERP and a State 404 Program permit, some portions of the ERP review are likely to be completed faster than the State 404 Program review because of public notice, EPA review requirements, or the need to coordinate with other state and federal agencies. This means that a project may be permittable under Chapter 62-330, F.A.C., (ERP) after the ERP review, but as a result of comments received during the 404 public notice or other aspects of the 404 review, the project may require modifications under the State 404 Program.

It is the intent of the Agencies to process the State 404 Program and ERP authorizations concurrently as much as possible. For this reason, the applicant is given the choice, in the application form, to waive the timeframes for issuance pertaining to ERP review when the State 404 Program review may take longer to complete. The Agencies **highly recommend** that applicants make this choice for the following reasons:



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- **Potential ERP modification fee savings.** If the ERP is issued before the State 404 Program authorization, and during the State 404 Program review process, it is found that modifications to the project are required for a project to be permittable under the State 404 Program, the applicant will be required to apply for, and pay the fee for, a modification of the issued ERP permit. If the ERP issuance timeframes are waived, the ERP would still be considered in review, and modifications could be made without an additional application or fee.
- **Less paperwork.** Fewer permit documents for staff to draft and fewer for the permittee to track.
- **More consistency.** The Agency or Agencies will be better able to ensure that the conditions of each authorization do not conflict.
- **Streamlined review.** The Agency or Agencies are able to work on the review process until both authorizations are issued. Additional reviews for modification, if needed, and the time required to draft two or more separate agency action documents, would be lessened resulting in a cleaner, simpler process for everyone.

If a project requires both an ERP and a State 404 Program authorization, the State 404 Program review shall not be considered complete until the ERP review is complete, unless the activity is exempt under Chapter 62-330, F.A.C., or qualifies for a general permit under Chapter 62-330, F.A.C. This is to satisfy the requirement for reasonable assurance that State water quality standards and coastal zone consistency requirements will be met.

# 5

## 5.1 General Procedures

The Agencies are required to follow procedural statutes and rules to review and act on applications and notices, and to provide rights to the public to object to Agency decisions. These statutes and rules include: Chapter 120, F.S., (Florida Administrative Procedures Act), Chapters 28-101 through 28-110, F.A.C., (Uniform Rules of Procedure), and each Agency's adopted Exceptions to the Uniform Rules of Procedure.

In acknowledgement that procedures required under Section 404 of the CWA may conflict with the above state procedural statutes and rules, Section 373.4146, F.S., provides the following:

- The Department may adopt any federal requirements, criteria, or regulations necessary to obtain assumption;
- Provisions of state law which conflict with the federal requirements do not apply to state administered section 404 permits;
- The Department must grant or deny an application for a state administered section 404 permit within the time allowed for permit review under 40 CFR Part 233, subparts D and F.
- The Department is specifically exempted from the time limitations provided in Sections 120.60 and 373.4141, F.S., for state administered section 404 permits [default provisions and processing timeframes];
- The decision by the Department to approve the reissuance (i.e, the issuance of a new permit) of any state administered section 404 permit issued pursuant to this section is subject to Sections 120.569 and 120.57, F.S., only with respect to any material permit modification or material changes in the scope of the project as originally permitted.



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Additional specific provisions for processing applications and notices under Chapter 62-331, F.A.C., are summarized in the sections below.



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## 5.2 Coordination with Other Agencies, States, and Tribes

Coordination with other State or federal agencies, other states, and tribes may be required during review of a notice or application for a State 404 Program authorization. These coordination requirements are described in the sections below.

### 5.2.1 Water Management Districts

When a proposed activity includes agricultural activities and the State 404 Program permit or verification of qualification for an exemption is processed by the Department, the Department shall consult with the District within whose boundaries the project lies to determine whether the proposed activity may be considered "normal farming, silviculture or ranching" activities, and whether the activity may be considered "ongoing" for the purposes of the exemption in 40 CFR Part 232.3(c)(1).
Until such time the Department delegates, upon EPA approval, the State 404 Program to the Districts, Department and District staff shall coordinate review of the ERP and State 404 permits to the greatest extent practicable. Such coordination shall include:

- When an application or notice that contains activities within state-assumed waters is received by the District, the District shall forward a copy of the application or notice to the appropriate local office of the Department.
- Department staff shall accompany District staff on the initial site visit to verify the delineation of wetlands and other surface waters for the State 404 Program permit.
- The Department and District shall communicate frequently to streamline the permit reviews and ensure consistency between the ERP and State 404 authorization.

### 5.2.2 Florida Division of Historical Resources/State Historic Preservation Office

The State Historic Preservation Office (SHPO) shall review proposed projects to determine whether the project is likely to have an adverse effect on properties listed, or eligible for listing on the National Register of Historic Places. If the Agency or SHPO determine that the project as proposed may have adverse effects to properties listed or eligible to be listed in the National Register of Historic Places, the Agency, applicant, and SHPO shall consult to resolve the adverse effects prior to the final determination by SHPO. SHPO may provide any of the following determinations for the project:

- Request for additional information, and/or a request for a Cultural Resources Assessment Survey (CRAS);
- No effect to historic properties;
- No adverse effect to historic properties;
- Conditional no adverse effect to historic properties (recommended project modifications and/or special conditions for the permit);
- Adverse effect to historic properties; or
- (For general permit applications) Request that the project be evaluated as an individual permit because of potential historical resources concerns.

If SHPO sends a request for additional information or a CRAS, or recommends project modifications, the information shall be included in an Agency request for additional information. Once the additional information is received by the Agency, the additional information shall be immediately forwarded to SHPO for review and additional determination.



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(a) General Permits – Pre-coordination with SHPO is required for those activities that may qualify for a general permit without notice to the Agency (no-notice general permit). Pre-coordination shall be the responsibility of the prospective permittee, and shall be conducted in accordance with paragraph 62-331.200(3)(~~i~~j), F.A.C.

If use of a general permit requires notice to the Agency, the Agency shall forward a copy of the notice to SHPO for review. A prospective permittee may choose to pre-coordinate with SHPO, in which case the prospective permittee shall submit a copy of the outcome of such review with the notice.

(b) Individual permits that also require an ERP individual permit – The Agency shall send a copy of the application to SHPO upon receipt and shall include a notice to SHPO that the project also requires a State 404 Program permit. At such time that the Agency publishes the public notice for the project in accordance with Rule 62-331.060, F.A.C., a copy of the public notice shall be sent to SHPO. The notice shall contain the ERP application and/or permit number. SHPO may have additional comments pertaining to the State 404 authorization, or may state that any information sent to the Agency during the ERP review period shall also apply to the State 404 Program review.

(c) Individual permits that do not require an ERP individual permit – The agency shall send SHPO a copy of the public notice in accordance with Rule 62-331.060, F.A.C.

If an agency, such as FDOT, is the applicant and has previously coordinated with SHPO on the project, and there have been no changes to the project following coordination, the agency may submit proof of concurrence or a determination by SHPO for the proposed project with the application for a State 404 permit.

### 5.2.3 Florida Fish and Wildlife Conservation Commission, U.S. Fish and Wildlife Service, and National Marine Fisheries Service

The Florida Fish and Wildlife Conservation Commission (FWC), the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) will be provided an opportunity to review all applications for projects with reasonable potential for affecting endangered or threatened species. Consultation with, or technical assistance by, FWC, FWS, or NMFS shall be required when the Agency determines that the project may have the potential to affect listed species.

To determine whether a project may have the potential to affect listed species, the Agency may use available resources such as scientific literature, species keys, and habitat maps, or it may observe signs that the site is used by listed species during the site visit. If the Agency determines that a listed species may be affected, the Agency shall seek consultation with or technical assistance by FWC, FWS, and NMFS, as applicable, regarding the proposed project. The Agency shall incorporate as permit conditions all recommended impact avoidance and minimization measures (protection measures) provided by the FWC, FWS, or NMFS under their respective authorities, to avoid jeopardizing listed species or adversely modifying designated or proposed critical habitat. For individual permits, the Agency shall send a copy of the public notice required by Rule 62-331.060, F.A.C., to EPA for review and comment. If the FWC, FWS, or NMFS concludes that a permit application is likely to jeopardize or adversely modify designated critical habitat and no protection measures are available to reduce the risk to an acceptable level,



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the Agency shall deny the permit or shall take no action and notify EPA and the applicant of the decision in accordance with sub-subparagraph 62-331.052(3)(b)6.b., F.A.C.

If the applicant for a State 404 permit is the holder of a valid and active biological opinion, or Habitat Conservation Plan Incidental Take Permit (HCP/ITP), or a similar binding agreement that is issued by the FWS or NMFS and the species and activities described in the State 404 permit application are covered in the Biological Opinion, HCP/ITP or similar agreement, then no additional avoidance and minimization measures pertaining to federal listed species shall be required. Upon receipt of such documentation, the Agency shall provide the document to FWS or NMFS for review.

Federal agency applicants that have pre-coordinated with FWS or NMFS, as appropriate, through a National Environmental Policy Act (NEPA) process shall submit the outcome of such coordination as part of the application for a State 404 permit.

### 5.2.4 United States Army Corps of Engineers

The Agency shall coordinate with the Corps as follows:

(a) Pending Corps Section 404 permit applications upon the date of assumption – on the effective date of the State program, the Corps will transfer all pending applications for permits under section 404 of the CWA within state-assumed waters to the Department for processing.

(b) Application screening – When an application is received by either the Corps or the Agency, the application will be screened using the Retained Waters List (Appendix A) and corresponding GIS layer to determine if the proposed activity will occur within retained waters. When a proposed activity falls within retained waters, the Agency will, within five calendar days of receipt, refer the applicant to the Corps. Likewise, when a proposed activity falls within state-assumed waters, the Corps will, within five calendar days of receipt, refer the applicant to the Agency.

(c) Projects requiring Section 408 authorization (see section 1.3.1.1, above) – If a project is likely to affect a Corps Civil Works project, the Agency will, within 5 days of receipt of the application, inform the Corps and instruct the applicant to contact the appropriate Corps Section 408 contact person for information about how to obtain a Section 408 authorization separately from the Corps. The Corps will notify the Agency within 14 days of receipt of the notification about whether the project requires Section 408 authorization. The Agency shall include a special condition in the permit requiring that the permittee obtain Section 408 permission prior to construction.

(d) Emergency permits – The Agencies shall consult with the Corps as soon as possible after receipt of a request for an emergency permit in state-assumed waters. The purpose of this consultation is to determine whether an emergency project may affect Corps civil works projects, Section 10 waters, navigation, Indian lands, or other Corps concerns.

(e) Unsatisfied EPA objection or requirement – If the Agency has received an EPA objection or requirement for a permit condition during the public comment period in Rule 62-331.060, F.A.C., and the Agency neither satisfies EPA's objections or requirement for a permit condition, nor denies the permit, the Corps shall process the permit application. In such cases,



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the Agency shall provide a copy of the application file to the Corps to facilitate the Corps' review.

### 5.2.5 United States Environmental Protection Agency

The Agency shall coordinate with EPA as follows:

(a) Waiver of review – EPA has oversight authority over the State 404 Program and may review individual permit applications and draft general permits. Federal law provides that EPA may waive review of certain categories of permits. EPA has waived review of all but the following categories of permits:

1. Draft general permits. These are drafts of any general permit that the State intends to add to Chapter 62-331, F.A.C. The term "draft general permit" does not mean each project subsequently authorized under an approved general permit.
2. Projects with reasonable potential for affecting endangered or threatened species as determined by the USFWS/NMFS;
3. Projects with reasonable potential for adverse impacts on waters of another state or tribe;
4. Projects that include discharges of dredged or fill material known or suspected to contain toxic pollutants in toxic amounts or hazardous substances in reportable quantities;
5. Projects located in proximity of a public water supply intake. For the purpose of the State 404 Program, proximity means 1000 feet from the intake;
6. Projects within critical areas established under state or federal law, including but not limited to national and state parks; fish and wildlife sanctuaries or refuges; national and historical monuments; wilderness areas and preserves; sites identified or proposed under the National Historic Preservation Act; and components of the National Wild and Scenic Rivers System;
7. Projects impacting compensatory mitigation sites, including mitigation banks, in lieu fee program sites, and permittee responsible mitigation sites;
8. Projects impacting sites that are owned or managed by federal entities, and activities by an applicant that is a federal entity;

In addition, the following projects shall be reviewed by EPA, even if they would otherwise not require EPA review under 1. Through 8., above:

1. Any project that EPA requests to review within 30 days of receipt of the public notice under Rule 62-331.060, F.A.C.;
2. Any project that the Agency requests EPA to review, at the Agency's discretion; and
3. Any project where the Agency fails to accept the recommendations of an affected state or tribe received during the public comment period.

Review of the above projects occurs upon receipt of the public notice by EPA. EPA may comment on, provide notice to the Agency of its intent to comment on, object to, make recommendations with respect to, or notify the Agency that it is reserving its right to object to, a permit application as described in Rule 62-331.052(3), F.A.C.



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### 5.2.6 Federally Recognized Tribes

The Agency shall send a copy of the public notice required in Rule 62-331.060, F.A.C., to a potentially affected tribe for any individual permit applications where the project has the potential to affect tribal waters or resources. The tribes may submit public comments or suggest project modifications or permit conditions to prevent adverse effects to tribal waters and resources. If the Agency chooses not to accept the recommendations of the tribe, the Agency shall submit the recommendations to EPA with an explanation of the Agency's reasons for not accepting the recommendations. EPA shall then review the project in accordance with paragraph 62-331.052(3)(b), F.A.C.

The Agency shall consult with the tribes as necessary for notices of intent to use general permits within tribal areas of concern. The tribes may provide information to assist the Agency in determining whether the project is likely to have more than minimal adverse effect on tribal waters or resources. If the Agency determines, based on information from the tribe, or information from the State Historic Preservation Office or Tribal Historic Preservation Office, that the project is likely to have more than minimal adverse effects on tribal waters or resources, the Agency shall require the applicant to apply for an individual permit for the project.

### 5.2.7 Adjacent States – Alabama and Georgia

The Agency shall send a copy of the public notice required in Rule 62-331.060, F.A.C., for any project that has the potential to affect the waters of an adjacent state. Typically, this would include projects within waters that straddle the border of the adjacent state, where the project is in close proximity to the border. The adjacent state may submit public comments or suggest project modifications or permit conditions to prevent adverse effects to that state's waters. If the Agency chooses not to accept the recommendations of the adjacent state, the Agency shall submit the recommendations to EPA with an explanation of the Agency's reasons for not accepting the recommendations. EPA shall then review the project in accordance with paragraph 62-331.052(3)(b), F.A.C.

## 5.3 Processing Individual Permit Applications

Applications for individual permits shall be processed in accordance with Rule 62-331.052, F.A.C., this section, and section 8.0 of this Handbook.

### 5.3.1 Public Notice

Public notice shall be conducted in accordance with Rule 62-331.060, F.A.C.

(a) Public notices shall be prepared by the Agency and shall contain:

1. The name and address of the applicant and, if different, the address or location of the activity(ies) regulated by the permit.
2. The name, address, and telephone number of a person to contact for further information.
3. A brief description of the comment procedures and procedures to request a public meeting, including deadlines.
4. A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be



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erected on fills, and a description of the type, composition and quantity of materials to be used as fill.

5. A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area.
6. A paragraph describing the various evaluation factors on which decisions are based.
7. Any other information which would significantly assist interested parties in evaluating the likely impact of the proposed activity.

(b) Notice of public meeting shall also contain the information in (a)1. through 7., above, and the following information:

1. Time, date, and place of meeting.
2. Reference to the date of any previous public notices relating to the permit.
3. Brief description of the nature and purpose of the meeting.

### 5.3.2 Long-Term Conceptual Planning for Projects that will Take More Than One Phase to Complete

State 404 permits are limited in duration under federal law. Larger projects may need to be completed in phases so as not to exceed the maximum per-permit duration. Such projects may include, but are not limited to, residential, governmental, or commercial developments, linear transportation, and mining activities. To provide some regulatory certainty to applicants of these larger projects, subsection 62-331.051(2), F.A.C., provides that all activities reasonably related to the project shall be included in the same permit application, which means that the applicant should provide sufficient information for the Agency to review the entire scope of the project. This will enable the Agency to assess whether the project as a whole meets the requirements of Chapter 62-331, F.A.C., and this Handbook.

The following steps shall be taken to facilitate efficient permitting and planning for larger projects that are expected to be completed in phases:

(a) Pre-application meeting

The applicant shall schedule a pre-application meeting with agency staff to discuss the entire scope of the project. The agency shall provide information and guidance to the applicant, including, but not limited to, such topics as project purpose and description, project alternatives and the alternatives analysis (see Appendix C), methods to avoid and minimize impacts to state-assumed waters, cumulative impacts, mitigation information, permitting strategy, and materials that should be included with the applications. The agency may provide a non-binding "pre-review" for any material that the applicant has prepared at this stage. The most helpful element to have ready for "pre-review" is the alternatives analysis required by Rule 62-331.053, F.A.C. The alternatives analysis shall be prepared for the entire project and shall be attached as an appendix to the long-term planning document in (b), below.



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(b) Phasing the project

The applicant shall divide the project into phases. Each phase shall contain activities that can reasonably be expected to be completed within no more than the maximum permit duration allowed under federal law. The applicant shall create a long-term planning document that explains how the project is phased, what activities are expected to be completed within each phase, an expected permitting timeframe for each phase, and an assessment of cumulative impacts. The long-term planning document shall be made part of the project file that goes out on public notice and federal review if required under 40 CFR § 233.51. The agency shall provide the applicant with information and guidance, as needed.

(c) Permitting

The applicant shall apply for one phase at a time. Permits issued under this section shall be for a fixed term not to exceed the maximum permit duration allowed under federal law. During its review of the first phase of the project, the Agency shall analyze and review the entire project, as proposed in the long-term planning document, under all 404 requirements. This analysis and review shall become part of the project file and be a basis of the agency action on the first phase, and the long-term planning document shall be incorporated into the permit.

The Agency shall depend on this analysis and review for subsequent phases of the same project except to the extent:

1. There are changes to state water quality standards that would be affected by activities described in the long-term planning document that have not already been authorized for construction or operation;
2. There have been amendments to Florida law governing special basin criteria that would affect future activities described in the long-term planning document that have not already been authorized for construction;
3. There are substantive changes in the site characteristics that would affect whether the design concepts described in the long-term planning document can continue to be reasonably expected to meet the conditions for authorizing construction of future phases. This shall include such things as changes in the designation of listed species, and changes to nesting, denning, and critical designation status of listed species that exist within the lands served by the project area; and
4. There have been material changes in the scope of the project, as defined in section 2.0 of this Handbook.

Subsequent review by the Agency shall be limited to those changes enumerated above. In order for the Agency to determine whether there have been any changes in the scope of the project, any changes to the most up-to-date version of the long-term planning document shall be included with the permit application for each subsequent phase with a summary of any changes made to the document since the previous phase was permitted. The most recent version of the long-term planning document shall be attached as an appendix to all subsequent permits issued for the project. The permit shall be clearly labeled with the following caveat:

> "This permit authorizes one phase of a multi-phase project. The long term planning document, attached as Appendix [X], does not reflect the scope of activities authorized by this permit. Authorized activities are described in the body of the permit document and depicted in



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Appendix [X] (drawings). It is a violation of Part IV of Chapter 373, F.S., and the Clean Water Act to conduct unauthorized dredge and fill activities."

Immediately prior to conclusion of each permit, the Department shall conduct a site inspection to verify site conditions and impacts are as anticipated and permitted. It is highly recommended that the applicant apply for the next phase one year before the permit for the previous phase expires or is projected to be completed – whichever is sooner. This will give the Agency time to process the application for the next phase, including putting the project out on public notice and potential federal agency review. While the Agency shall follow the expedited review procedures in subsection 62-331.052(1) and subparagraph 62-331.060(3)(b)5., F.A.C., allowing one year for processing will help prevent project delays and will help provide a seamless transition between phases. Activities identified in a permit may be administratively continued as described in Section 5.3.3.

### 5.3.3 Continuation of Permits and Review for a New Permit for an Existing Project

State 404 Permits cannot be extended beyond the duration allowed under federal law or renewed. Large projects that are expected to take more than the maximum duration allowed under federal law to complete shall follow the long-term planning provisions in section 5.3.2. However, occasionally projects will take more than the maximum duration allowed under federal law to complete because of unexpected project delays. Unexpected project delays can occur for many reasons such as discreet storm events, labor or supply shortages, unanticipated number of inclement weather days, etc. If this occurs, the permittee shall apply for a new permit. If applicable, the permittee may request that the Agency use the original application for a new permit as described in (a), below.

If the permittee applies for a new permit at least 180 days before expiration of the original permit, the original permit may be administratively continued until the new permit is issued (i.e. the permittee may continue work under the original permit until the new permit is issued).

If the permittee does not apply for a new permit at least 180 days before expiration of the original permit, the permittee shall stop work on or before the original expiration date. A new permit must be obtained prior to commencement of work.

(a) An applicant may request that the Agency use the original application form and materials for a new permit when:

1. There have been no material changes to site conditions, including use of the site by listed species, since the original permit was issued other than activities authorized in the original permit;
2. Where the project is in compliance with the original permit; and
3. State 404 Program rules applicable to the project have not changed.

Upon receipt of a request to use the original application for a new permit, the Agency shall conduct a site visit to verify that 1. and 2., above, have been met.

(b) If there are any changes in site conditions, State 404 program rules, proposed modifications, or if the project is found to be out of compliance with the original permit, the applicant shall submit a new application.



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(c) Any application for a new permit for an existing project shall provide the following additional information:

1. A description of work already completed under the original permit;
2. A description of work that has not yet been completed (if requested pursuant to (a), above, the description should be limited to work that was authorized in the original permit);
3. The reason for the unexpected delay;
4. The amount of time needed to finish the project (no more than the maximum duration allowed under federal law).

An application for a new permit will be processed as a new individual permit, including all public notice requirements. An application that includes unfinished activities authorized in a previously issued State 404 Program permit, where the application is received prior to expiration of the original permit for the activities, shall be subject to the provisions of Subsection 373.4146(5), F.S., as applicable.

## 6.0 Duration, Modification, and Transfer of Permits

(a) Duration of permits shall be in accordance with Rule 62-331.090, F.A.C.

(b) Individual permits become effective when they are signed by the Agency and the applicant. Each State 404 Individual permit, when issued, shall contain a signature page with signature blocks for the person who has authority to sign permits for the district where the permit is issued and for the applicant. The applicant shall sign the page and send it back to the Agency for Agency signature.

(c) Individual permits cannot be extended beyond the duration allowed under federal law but may be administratively continued while an application for a new permit is under review in accordance with section 5.3.3 of this Handbook when unexpected project delays cause a project to require more time to complete.

## 7.0 Determination and Review of the Landward Extent of State-Assumed Waters

Determination and review of the landward extent of state-assumed waters shall be conducted in accordance with subsection 62-331.010(3), F.A.C., and section 7.1 of Volume I.

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### 7.1 Use of ERP Formal Determinations

Valid formal determinations conducted in accordance with subsection 62-330.201(2), F.A.C., and section 7.2 of Volume I shall be accepted for State 404 Program permits.

### 7.2 Informal Determinations

Informal determinations may be requested by the applicant in accordance with section 7.3 of Volume I.



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## 8.0 Criteria for Review of State 404 Program Individual Permits

State 404 Program permits are processed using ERP criteria, the additional criteria in Chapter 62-331, F.A.C., Volume I, and this Handbook. The ERP review covers most criteria. Those are described in Volume I. Any additional criteria not described in Volume I, as well as those ERP criteria that conflict with the State 404 Program, are described in this section.

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## 8.1 Administratively and Technically Complete Applications

There are two types of "completeness" for applications for a State 404 Program individual permit.

(a) Administratively complete is defined in section 2.0. Administratively complete means the project is complete enough to go out on public notice but may not have all details worked out. To be complete enough for public notice, the project design should be nearly finalized, and environmental information submitted with the application should be detailed enough to provide a good description of project environmental impacts in the notice. A project shall not be administratively complete if the alternatives analysis required by subsection 62-331.053(1), F.A.C., has not been submitted.

(b) Technically complete is defined in section 2.0. A technically complete application includes all information required for the Agency to commence review as described in section 8.2, below.

Applicants should strive to submit applications that are as technically complete as possible. Pre-application meetings as described in section 5.0 are important and can assist an applicant in submitting a complete application.

## 8.2 Sequence of Review

Upon receipt of a technically complete application, the Agency will follow the sequence of review for processing applications summarized below. The sequence is simplified for purposes of illustration. The actual process followed may be iterative, with the results of one step leading to a re-examination of the previous steps. The Agency must address all the applicable State 404 Program permitting conditions in reaching a permitting decision for a project.

(a) Determine whether the activity qualifies for a State 404 Program exemption or general permit. If it is not covered by an exemption or general permit, then:

(b) Review practicable alternatives to the proposed activity. Alternatives may include not dredging or filling in state-assumed waters (avoidance) or dredging or filling in an alternative aquatic site with potentially less damaging environmental consequences. The applicant shall submit an alternatives analysis as required by Rule 62-331.053, F.A.C. Guidance for completing the alternatives analysis can be found in Appendix C.

(c) Review the proposed project area boundaries. For the purposes of the State 404 Program only, the project area includes all areas of dredging or filling in state-assumed waters, and any proposed mixing zones, where applicable. Mixing zones shall be reviewed in accordance with Chapter 62-331, F.A.C., and as provided in Rule 62-4.242, and subsection 62-4.244(5), F.A.C.



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(d) Evaluate the various physical and chemical components which characterize the non-living environment of the proposed site, the substrate and the water including its dynamic characteristics consistent with Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C.

(e) Identify and evaluate any special or critical characteristics of the proposed project site and surrounding areas which might be affected by use of such site, related to their living communities or human uses consistent with Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C.

(f) Review the information submitted with the application to determine whether the information provided by the applicant is sufficient to provide reasonable assurance that the applicable provisions of Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C., will be met.

(g) Evaluate the material to be dredged or used as fill to determine the possibility of the presence of contaminants, including chemical contamination, that may violate state water quality standards listed in paragraph 62-330.301(1)(e), F.A.C., or any toxic effluent standard or prohibition under section 307 of the CWA. Check for physical incompatibility of the material to be used as fill (examples – 1) muck should not be used as structural fill but may be appropriate for use in a wetland restoration project; 2) if a certain ecological community type is expected to colonize the fill, the fill should be appropriate for the desired species).

(h) If there is a reasonable probability that contaminants are present, including chemical contamination, the Agency shall require the applicant to conduct appropriate sediment, elutriate, and/or water quality tests, as applicable.

(i) Identify appropriate and practicable changes to the project plan to avoid or minimize the environmental impact of the activity, as described in Volume I, section 10.2.1, except 10.2.1.2, which is not applicable to the State 404 Program. Avoidance should be considered first, and then minimization only if avoidance is not practicable.

(j) Complete a Technical Staff Report to document how the project addresses the requirements of Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C.

(k) Make and document a finding of either compliance or noncompliance with the requirements of Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C. This is a determination of whether the project, including any mitigation, is permittable under the State 404 Program.

(l) Prepare a written determination on each application outlining the permitting decision and the rationale for the decision. The determination shall be dated, signed, and included in the official record prior to final action on the application. The Technical Staff Report from step 10 (subsection (j)), above, shall be included in or attached to the determination.

## 8.3 Review Criteria Unique to State 404 Program Permits

The following criteria are unique to the State 404 Program and will need to be considered in addition to the criteria for an ERP in Chapter 62-330, F.A.C., to meet the requirements of the State 404 Program. This list is a summary provided for convenience:



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### 8.3.1 Alternatives Analysis

Some aspects of the alternatives analysis are similar to the requirements in Volume I, section 10.2.1 regarding elimination and reduction of impacts. The State 404 Program differs from ERP in that it requires more documentation (see subsection 62-331.053(1), F.A.C.), and allows the "No project alternative" (or "No action alternative") to be considered.

### 8.3.2 Aesthetics Review

Aesthetics shall be considered as part of the evaluation of potential adverse effects on human-use characteristics that may occur as a result of the proposed activities.

Aesthetics associated with the aquatic ecosystem consist of the perception of beauty by one or a combination of the senses of sight, hearing, touch, and smell. Aesthetics of aquatic ecosystems apply to the quality of life enjoyed by the general public and property owners.

Possible loss of values (adverse effects) include: The dredge or fill projects can mar the beauty of natural aquatic ecosystems by degrading water quality, creating distracting project areas, inducing inappropriate development, encouraging unplanned and incompatible human access, and by destroying vital elements that contribute to the compositional harmony or unity, visual distinctiveness, or diversity of an area. Dredging or filling can adversely affect the particular features, traits, or characteristics of an aquatic area which make it valuable to property owners. Activities which degrade water quality, disrupt natural substrate and vegetational characteristics, deny access to or visibility of the resource, or result in changes in odor, air quality, or noise levels may reduce the value of an aquatic area to private property owners.

The Agency shall also consider any comments received during the public comment period that apply to aesthetics.

### 8.3.3 Mitigation hierarchy

Mitigation for State 404 Program permits is generally evaluated in accordance with Volume I, section 10.3, like ERP. However, in addition to those requirements, the federal mitigation hierarchy described in section 8.5.1 of this Handbook, shall apply to any mitigation for State 404 Program permits.

### 8.3.4 Permit signatures

The Permittee, as well as the Agency, must sign an individual permit before it is considered effective.

After making a permitting decision, The Agency will draft the permit, and will send the draft permit to the applicant for review. If the applicant accepts the permit and conditions, the applicant shall sign the signature page and send the document back to the Agency using regular mail services or electronically. The Agency will then sign the permit and send the signed permit to the Permittee. The date that the Agency signs the permit will be the effective date of the permit. The Permittee must receive the fully executed permit before conducting any activity authorized in the permit.



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### 8.3.5 Cumulative Effects

Unlike ERP reviews, the CWA does not limit analysis of cumulative effects to the resources within the impacted drainage basin. However, the drainage basin is a good starting point for review and will often be found to be the appropriate scale. Some projects will require cumulative effects reviewed on a larger or smaller scale depending on the size, project purpose, and resources proposed for impact. When reviewing cumulative effects, the Agency shall identify resources of concern and determine the potentially effected resource area(s). Compensatory mitigation for cumulative impacts shall comply with Volume I, section 10.2.8.

Cumulative impacts are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual dredge or fill activities. Although the impact of a particular activity may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

Cumulative effects attributable to dredge or fill activities in wetlands and other surface waters should be predicted to the extent reasonable and practical. The Agency shall collect information and solicit information from other sources, such as other permitting agencies, governmental agencies, or the public, about the cumulative impacts on the aquatic ecosystem. This information shall be documented and considered during the decision-making process concerning the evaluation of individual permit applications and monitoring and enforcement of existing permits.

### 8.3.6 Secondary Effects

Secondary effects are effects on an aquatic ecosystem that are associated with a dredge or fill activity, but do not result from the actual placement of the dredged or fill material. Information about secondary effects on aquatic ecosystems shall be considered and documented during the decision-making process concerning the evaluation of individual permit applications.

Some examples of secondary effects on an aquatic ecosystem are fluctuating water levels in an impoundment and downstream associated with the operation of a dam, septic tank leaching and surface runoff from residential or commercial developments on fill, and growth induced by improved access. Activities to be conducted on uplands created by fill activities in wetlands or other surface waters may have secondary impacts within those waters which should be considered in evaluating the impact of creating those uplands.

In addition to the secondary impact analysis categories identified in Volume I, section 10.2.7, the CWA requires secondary impact analysis on the following categories:

(a) Sanctuaries and refuges
Sanctuaries and refuges consist of areas designated under state and federal laws or local ordinances to be managed principally for the preservation and use of fish and wildlife resources. Sanctuaries and refuges may be affected by dredge or fill activities which will: Disrupt the breeding, spawning, migratory movements or other critical life requirements of resident or transient fish and wildlife resources;

1. Create unplanned, easy and incompatible human access to remote aquatic areas;
2. Create the need for frequent maintenance activity;
3. Result in the establishment of undesirable competitive species of plants and animals; or



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4. Change the balance of water and land areas needed to provide cover, food, and other fish and wildlife habitat requirements in a way that modifies sanctuary or refuge management practices;

(b) Human use characteristics
Categories include:

1. Municipal and private water supplies. Activities can affect the quality of water supplies with respect to color, taste, odor, chemical content and suspended particulate concentration, in such a way as to reduce the fitness of the water for consumption. Water can be rendered unpalatable or unhealthy by the addition of suspended particulates, viruses and pathogenic organisms, and dissolved materials. The expense of removing such substances before the water is delivered for consumption can be high. Activities may also affect the quantity of water available for municipal and private water supplies. In addition, certain commonly used water treatment chemicals have the potential for combining with some suspended or dissolved substances from dredged or fill material to form other products that can have a toxic effect on consumers.

2. Recreational and commercial fisheries. Activities can affect the suitability of recreational and commercial fishing grounds as habitat for populations of consumable aquatic organisms. Activities can result in the chemical contamination of recreational or commercial fisheries. They may also interfere with the reproductive success of recreational and commercially important aquatic species through disruption of migration and spawning areas. The introduction of pollutants at critical times in their life cycle may directly reduce populations of commercially important aquatic organisms or indirectly reduce them by reducing organisms upon which they depend for food. Any of these impacts can be of short duration or prolonged, depending upon the physical and chemical impacts of the discharge and the biological availability of contaminants to aquatic organisms.

3. Water-related recreation. Water-related recreation encompasses activities undertaken for amusement and relaxation. Recreational activities encompass two broad categories of use: consumptive, such as harvesting resources by hunting and fishing; and non-consumptive, such as canoeing and sight-seeing. Activities may adversely modify or destroy water use for recreation by changing turbidity, suspended particulates, temperature, dissolved oxygen, dissolved materials, toxic materials, pathogenic organisms, quality of habitat, and the aesthetic qualities of sight, taste, odor, and color.

4. Aesthetics. Aesthetics associated with the aquatic ecosystem consist of the perception of beauty by one or a combination of the senses of sight, hearing, touch, and smell. Aesthetics of aquatic ecosystems apply to the quality of life enjoyed by the general public and property owners. Dredge or fill activities can mar the beauty of natural aquatic ecosystems by degrading water quality, creating distracting disposal sites, inducing inappropriate development, encouraging unplanned and incompatible human access, and by destroying vital elements that contribute to the compositional harmony or unity, visual distinctiveness, or diversity of an area. Dredge or fill activities can adversely affect the particular features, traits, or characteristics of an aquatic area which make it valuable to property owners. Activities which degrade water quality, disrupt natural substrate and vegetational characteristics, deny access to or visibility of the resource, or result in changes in odor, air quality, or noise levels may reduce the value of an aquatic area to private property owners.



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5. Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves. These preserves consist of areas designated under federal and state laws or local ordinances to be managed for their aesthetic, educational, historical, recreational, or scientific value. Dredge or fill activities in such areas may modify the aesthetic, educational, historical, recreational and/or scientific qualities thereby reducing or eliminating the uses for which such sites are set aside and managed.

## 8.4 ERP Criteria Not Applicable to State 404 Program Permits

Section 373.4146, F.S., provides that provisions of state law that conflict with federal requirements pertaining to Section 404 permits do not apply to state administered section 404 permits (State 404 Program permits). The following rules and statutes applicable to ERP are not applicable to State 404 Program Permits. This list may not be exhaustive.

Statutes:

- Section 120.60, F.S., pertaining to default of processing timeframes;
- Section 373.4141, F.S., containing timeframes for review of ERP permits;
- Certain provisions of Section 373.414, F.S., pertaining to mining mitigation;
- Any provision of Chapter 378, F.S., pertaining to "life-of-the-mine" permits;
- Sections 378.212(1)(g), and 378.404(9), F.S., pertaining to variances for certain mining reclamation activities;
- Subsection 378.403(19), F.S., containing a definition of "Wetlands" with special provisions for certain areas included in an approved conceptual reclamation plan or modification application;
- Section 252.363(1)(a)3., F.S., pertaining to the tolling and extension of permits pursuant to part IV of Chapter 373, F.S., when the Governor declares a state of emergency, if the State 404 permit would be extended beyond the duration allowed under federal law.

Rules:

- Paragraph 62-345.600(1)(b), F.A.C., pertaining to time lag for phosphate and heavy minerals mines;
- Volume I, Section 10.2.1.2 providing certain exceptions for reduction or elimination of impacts;
- Rule 62-348.600, F.A.C., pertaining to mitigation for high fiber peat mines.

## 8.5 Compensatory Mitigation

Compensatory mitigation for State 404 Program permits shall be conducted in accordance with Rule 62-331.130, F.A.C., and this section.

### 8.5.1 Compensatory Mitigation Hierarchy

When considering options for successfully providing the required compensatory mitigation, the Agency shall consider the type and location options in the order presented in paragraphs (a) through (e) of this section. It is recognized that flexibility may be needed to address watershed



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needs and allow for the consideration of mitigation projects that are environmentally preferable based on a watershed approach, if such projects are consistent with this section.

Subject to the provisions in paragraphs (a) through (e), below, and section 8.5.2 of this Handbook, the required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources (including the availability of water rights), trends in land use, ecological benefits, and compatibility with adjacent land uses. When compensating for impacts to marine resources, the location of the compensatory mitigation site should be chosen to replace lost functions and services within the same marine ecological system (e.g., reef complex, littoral drift cell). Compensation for impacts to aquatic resources in coastal watersheds (watersheds that include a tidal water body) should also be located in a coastal watershed where practicable. Compensatory mitigation projects should not be located where they will increase risks to aviation by attracting wildlife to areas where aircraft-wildlife strikes may occur (e.g., near airports).

(a) Mitigation bank credits. When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by the purchase of mitigation bank credits.

Since an approved instrument (including an approved mitigation plan and appropriate real estate and financial assurances) for a mitigation bank is required to be in place before its credits can begin to be used to compensate for authorized impacts, use of a mitigation bank can help reduce risk and uncertainty, as well as temporal loss of resource functions and services. Mitigation bank credits are not released for debiting until specific milestones associated with the mitigation bank site's protection and development are achieved, thus use of mitigation bank credits can also help reduce risk that mitigation will not be fully successful.

Mitigation banks typically involve larger, more ecologically valuable parcels, and more rigorous scientific and technical analysis, planning and implementation than permittee-responsible mitigation. Also, development of a mitigation bank requires site identification in advance, project-specific planning, and significant investment of financial resources that is often not practicable for many in-lieu fee programs. For these reasons, the Agency shall give preference to the use of mitigation bank credits when these considerations are applicable. However, these same considerations may also be used to override this preference, where appropriate, as, for example, where an in-lieu fee program has released credits available from a specific approved in-lieu fee project, or a permittee-responsible project will restore an outstanding resource based on rigorous scientific and technical analysis.

(b) Corps authorized in-lieu fee program credits. Where permitted impacts are located within the service area of a Corps authorized in-lieu fee program, and the in-lieu fee program has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the in-lieu fee program.

In-lieu fee projects typically involve larger, more ecologically valuable parcels, and more rigorous scientific and technical analysis, planning and implementation than permittee-responsible mitigation. They also devote significant resources to identifying and addressing high-



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priority resource needs on a watershed scale, as reflected in their compensation planning framework. For these reasons, the Agency shall give preference to in- lieu fee program credits over permittee-responsible mitigation, where these considerations are applicable. However, as with the preference for mitigation bank credits, these same considerations may be used to override this preference where appropriate. Additionally, in cases where permittee-responsible mitigation is likely to successfully meet performance standards before advance credits secured from an in-lieu fee program are fulfilled, the Agency shall also consider this factor in deciding between in-lieu fee mitigation and permittee-responsible mitigation.

(c) Permittee-responsible mitigation under a watershed approach. Where permitted impacts are not in the service area of an approved mitigation bank or in-lieu fee program that has the appropriate number and resource type of credits available, permittee-responsible mitigation is the only option. Where practicable and likely to be successful and sustainable, the resource type and location for the required permittee-responsible compensatory mitigation shall be determined using the principles of a watershed approach as outlined in section 8.5 of the 404 Handbook.

(d) Permittee-responsible mitigation through on-site and in-kind mitigation. In cases where a watershed approach is not practicable, the Agency shall consider opportunities to offset anticipated aquatic resource impacts by requiring on-site and in-kind compensatory mitigation. The Agency shall also consider the practicability of on-site compensatory mitigation and its compatibility with the proposed project.

(e) Permittee-responsible mitigation through off-site and/or out-of-kind mitigation. If, after considering opportunities for on-site, in-kind compensatory mitigation as provided in paragraph (d), above, the Agency determines that these compensatory mitigation opportunities are not practicable, are unlikely to compensate for the permitted impacts, or will be incompatible with the proposed project, and an alternative, practicable off-site and/or out-of-kind mitigation opportunity is identified that has a greater likelihood of offsetting the permitted impacts or is environmentally preferable to on-site or in-kind mitigation, the Agency shall require that this alternative compensatory mitigation be provided.

### 8.5.2 Watershed approach

The Agency shall use a watershed approach to establish compensatory mitigation requirements in State 404 Program permits to the extent appropriate and practicable. Where a watershed plan is available, the Agency will determine whether the plan is appropriate for use in the watershed approach for mitigation. In cases where the Agency determines that an appropriate watershed plan is available, the watershed approach shall be based on that plan. Where no such plan is available, the watershed approach shall be based on information provided by the applicant or available from other sources. The ultimate goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of mitigation sites.

(a) Considerations

1. A watershed approach to mitigation considers the importance of landscape position and resource type of mitigation projects for the sustainability of aquatic resource functions within the watershed. Such an approach considers how the types and locations of mitigation projects will provide the desired aquatic resource functions and will continue



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to function over time in a changing landscape. It also considers the habitat requirements of important species, habitat loss or conversion trends, sources of watershed impairment, and current development trends, as well as the requirements of other regulatory and non-regulatory programs that affect the watershed, such as storm water management or habitat conservation programs. It includes the protection and maintenance of terrestrial resources, such as non-wetland riparian areas and uplands, when those resources contribute to or improve the overall ecological functioning of aquatic resources in the watershed. Mitigation requirements determined through the watershed approach shall not focus exclusively on specific functions (e.g., water quality or habitat for certain species), but shall provide, where practicable, the suite of functions typically provided by the affected aquatic resource.

2. Locational factors (e.g., hydrology, surrounding land use) are important to the success of mitigation for impacted habitat functions and may lead to siting of such mitigation away from the project area. However, consideration shall also be given to functions and services (e.g., water quality, flood control, shoreline protection) that will likely need to be addressed at or near the impacted areas.

3. A watershed approach may include on-site mitigation, off-site mitigation (including mitigation banks or in-lieu fee programs), or a combination of on-site and off-site mitigation.

4. A watershed approach to mitigation shall include, to the extent practicable, inventories of historical and existing aquatic resources, including identification of degraded aquatic resources, and identification of immediate and long-term aquatic resource needs within watersheds that can be met through permittee-responsible mitigation projects, mitigation banks, or in-lieu fee programs. Planning efforts shall identify and prioritize aquatic resource restoration, creation, and enhancement activities, and preservation of existing aquatic resources that are important for maintaining or improving ecological functions of the watershed. The identification and prioritization of resource needs shall be as specific as possible, to enhance the usefulness of the approach in determining mitigation requirements.

(b) Information Needs

1. In the absence of a watershed plan determined by the Agency to be appropriate for use in the watershed approach, the Agency shall use a watershed approach based on analysis of information regarding watershed conditions and needs, including potential sites for aquatic resource restoration activities and priorities for aquatic resource restoration and preservation. Such information includes: Current trends in habitat loss or conversion; cumulative impacts of past development activities, current development trends, the presence and needs of sensitive species; site conditions that favor or hinder the success of mitigation projects; and chronic environmental problems such as flooding or poor water quality.

2. This information may be available from sources such as wetland maps; soil surveys; U.S. Geological Survey topographic and hydrologic maps; aerial photographs; information on rare, endangered and threatened species and critical habitat; local ecological reports or studies; and other information sources that could be used to identify locations for suitable mitigation projects in the watershed.



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(c) Watershed Scale

The cumulative impact basins described in Volume I, section 10.2.8 shall be used when considering watershed scale in mitigation for State 404 Program permits.

### 8.5.3 Permit Specific Conditions for Compensatory Mitigation

(a) The compensatory mitigation requirements for a permit, including the amount and type of compensatory mitigation, shall be clearly stated in the specific conditions of the individual or general permit verification. The specific conditions must be enforceable.

(b) For an individual permit that requires permittee-responsible mitigation, the specific conditions shall:

1. Identify the party responsible for providing the compensatory mitigation;
2. Incorporate the final mitigation plan approved by the Agency;
3. State the objectives, performance standards, and monitoring required for the compensatory mitigation project, unless they are provided in the approved final mitigation plan; and
4. Describe any required financial assurances or long-term management provisions for the compensatory mitigation project, unless they are specified in the approved final mitigation plan.

(c) For a general permit activity that requires permittee-responsible mitigation, the specific conditions shall describe the compensatory mitigation proposal, which may be either conceptual or detailed. The general permit verification shall also include a specific condition that states that the permittee cannot commence work until the Agency approves the final mitigation plan, unless the Agency determines that such a specific condition is not practicable and not necessary to ensure timely completion of the required compensatory mitigation. To the extent appropriate and practicable, specific conditions of the general permit verification shall also address the requirements of paragraph (b), above.

(d) If a mitigation bank or in-lieu fee program is used to provide the required compensatory mitigation, the specific conditions shall indicate whether a mitigation bank or in-lieu fee program will be used and specify the number and resource type of credits the permittee is required to purchase. In the case of an individual permit, the specific condition shall also identify the specific mitigation bank or in-lieu fee program that will be used. For general permit verifications, the specific conditions shall either identify the specific mitigation bank or in-lieu fee program, or state that the specific mitigation bank or in-lieu fee program used to provide the required credits shall be approved by the Agency prior to purchasing credits.

### 8.5.4 Timing of Compensatory Mitigation

Implementation of the compensatory mitigation project shall be, to the maximum extent practicable, in advance of or concurrent with the authorized impacts. Temporal loss shall be compensated for in accordance with appropriate calculations for time lag in accordance with Rule 62-345.600, F.A.C., except paragraph 62-345.600(1)(b), F.A.C., which is not applicable to the State 404 Program.



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### 8.5.5 Use of Preservation as Compensatory Mitigation

(a) Preservation may be used to provide compensatory mitigation when all the following criteria are met:

1. The resources to be preserved provide important physical, chemical, or biological functions for the watershed;
2. The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the Agency shall use appropriate quantitative assessment tools, where available;
3. Preservation is determined by the Agency to be appropriate and practicable;
4. The resources are under threat of destruction or adverse modifications; and
5. The preserved site will be permanently protected through an appropriate real estate or other legal instrument as described in Volume I, section 10.3.8.

(b) Where preservation is used to provide compensatory mitigation, to the extent appropriate and practicable the preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. This requirement may be waived by the Agency where preservation has been identified as a high priority using a watershed approach described in section 8.5.2 of this Handbook, but compensation ratios shall be higher.

### 8.5.6 Additional Considerations for Permittee-Responsible Compensatory Mitigation Projects

#### 8.5.6.1 Monitoring

The compensatory mitigation plan shall provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period shall be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs). Following project implementation, the Agency shall reduce or waive the remaining monitoring requirements upon a determination that the compensatory mitigation project has achieved its performance standards. The Agency may also extend the original monitoring period upon a determination that performance standards have not been met or the compensatory mitigation project is not on track to meet them. The Agency shall revise monitoring requirements when remediation or adaptive management is required.

#### 8.5.6.2 Adaptive Management

(a) If the compensatory mitigation project cannot be constructed in accordance with the approved mitigation plans, the permittee shall notify the Agency. Any significant modification of the compensatory mitigation project requires approval from the Agency.

(b) If monitoring or other information indicates that the compensatory mitigation project is not progressing towards meeting its performance standards as anticipated, the responsible party shall notify the Agency as soon as possible. The Agency shall evaluate and pursue measures to address deficiencies in the compensatory mitigation project. The Agency shall consider



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whether the compensatory mitigation project is providing ecological benefits comparable to the original objectives of the compensatory mitigation project.

(c) The Agency, in consultation with the responsible party (and other state, federal, tribal, and local agencies, as appropriate), will determine the appropriate measures. The measures may include, but are not limited to, site modifications, design changes, revisions to maintenance requirements, and revised monitoring requirements. The measures shall be designed to ensure that the modified compensatory mitigation project provides aquatic resource functions comparable to those described in the mitigation plan objectives.

(d) Performance standards shall be revised in accordance with adaptive management to account for measures taken to address deficiencies in the compensatory mitigation project. Performance standards shall also be revised to reflect changes in management strategies and objectives if the new standards provide for ecological benefits that are comparable or superior to the approved compensatory mitigation project. No other revisions to performance standards shall be allowed except in the case of natural disasters.

#### 8.5.6.3 Long-term Protection and Management

(a) The real estate instrument, management plan, or other long-term protection mechanism must contain a provision requiring 60-day advance notification to the Agency before any action is taken to void or modify the instrument, management plan, or long-term protection mechanism, including transfer of title to, or establishment of any other legal claims over, the compensatory mitigation site.

(b) The permit conditions shall identify the party responsible for ownership and all long-term management of the compensatory mitigation project. The permit conditions shall, where applicable, contain provisions allowing the permittee to transfer the long-term management responsibilities of the compensatory mitigation project site to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager, after review and approval by the Agency. The land stewardship entity need not be identified in the original permit, as long as the future transfer of long-term management responsibility is approved by the Agency.

(c) A long-term management plan shall include a description of long-term management needs, annual cost estimates for these needs, and identify the funding mechanism that will be used to meet those needs.

(d) Any provisions necessary for long-term financing shall be addressed in the original permit. The Agency shall require provisions to address inflationary adjustments and other contingencies, as appropriate. Appropriate long-term financing mechanisms include non-wasting endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial instruments. In cases where the long-term management entity is a public authority or government agency, that entity shall provide a plan for the long-term financing of the site.

(e) Any long-term financing mechanisms shall be approved by the Agency in advance of the authorized impacts.



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## APPENDIX A

### Retained Waters List

### August 23, 2019

The Corps will retain responsibility for permitting for the discharge of dredged or fill material in those waters identified in the Retained Waters List (below), as well as all waters subject to the ebb and flow of the tide shoreward to their mean high water mark that are not specifically listed in the Retained Waters List, including wetlands adjacent thereto landward to the administrative boundary.

## Rivers and Creeks

Acosta Creek
Alafia River
Alaqua Creek
Alexander Springs Creek
Alligator Creek (Sarasota County)
Alligator Lake-Lake Gentry Canal
Amelia River
Anclote River (Upstream to 7 Springs Blvd)
Apalachicola River
Arlington River
Aucilla River
Axle Creek
Banana River
Barrentine Creek
Barron River
Basin Creek
Bayou Marcus
Bear Creek (Bay County)
Bear Creek (Putnam County)
Belcher Canal
Bells River
Bessy Creek
Big Coldwater Creek (Also East Fork and West Fork)
Big Davis Creek
Big Fishweir Creek
Big Juniper Creek
Big Marco River
Big Muddy Creek
Big Mulberry Branch
Billy Creek
Black Creek
Black Creek (Walton County)
Black Water Creek
Blackwater River (Santa Rosa and Okaloosa Counties)
Blind Creek
Blockhouse Creek
Blounts Branch
Blue Creek (Lake County)
Blue Hole Creek
Blue Springs Run
Bluff Branch
Boathouse Creek
Bogey Branch
Boggy Creek (Orange and Osceola Counties)
Bonnet Creek (Seminole County)
Botts Creek
Bowlees Creek
Box Branch (Duval County)
Boynton Canal
Braden River (Downstream of Ward Lake Dam (Bill Evers Reservoir))
Bradley Creek
Bray Creek
Brick-Alligator Lake Canal
Britt Creek (Martin and St Lucie Counties)
Broad River
Brothers River
Broward Creek
Broward River
Browns Creek
Buck Creek (Charlotte County)
Buckhorn Creek (Hillsborough County)
Bull Creek (Flagler County)
Bulow Creek
Bumblebee Creek
Burnt Mill Creek (Bay County)
Butcher Pen Creek
Butler Creek
C-15 Canal
C-17 Canal
C-18 Canal
C-23 Canal
C-24 Canal
C-51 Canal / West Palm Beach Canal
Cabbage Creek (St Johns County)
Callaway Creek
Caloosahatchee River
Camp Branch (Putnam County)
Caney Branch (Duval County)
Canoe Creek (Osceola County)
Capo Creek
Carpenter Creek
Carrabelle River
Casa Cola Creek
Cat Creek (Franklin County)
Cedar Creek (Putnam County)
Cedar Point Creek (Duval County)
Cedar River
Cemetery Creek
Chassahowitzka River
Chatham River
Chattahoochee River
Chicopit Bay
Chipola River
Choctawhatchee River
Christopher Creek (Duval County)
Clapboard Creek
Clark Creek (Gulf County)
Clarkes Creek
Clear Creek (Escambia County)
Cocohatchee River
Coon Lake-Lake Lizzie Canal
Coral Gables Waterway
Cormorant Branch
Cow Creek (Putnam County)
Cowhead Creek (Duval County)
Cracker Branch (St Johns County, St Johns River)
Cradle Creek
Craig Creek
Crane Creek (Brevard County, Melbourne)
Crooked Creek (Bay County)
Crooked Creek (Martin County)
Crooked River (Franklin County)
Crooked River (Lake County)
Cross Creek (Alachua County)
Cross Florida Barge Canal
Crystal River
Cunningham Creek
Cut Creek
Cypress Creek (Lee County)
Danforth Creek
Dania Cut-off canal



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Days Creek
Dead River (Kissimmee River)
Dead River (Lake County, Florida)
Dead River (Wakulla County)
Dean Dead River
DeBlieu Creek
Deep Bottom Creek
Deep Creek (St Johns County)
Deer Creek (Duval County)
Depot Creek
Dillaberry Branch
Dog Branch
Drummond Creek
Dunns Creek
Durbin Creek
East Bay River
East Creek (St Johns County)
East River (Washington and Bay Counties)
Eau Gallie River
Econfina River
Econlockhatchee River
Egans Creek
Eightmile Creek (Escambia County)
Elbow Branch (Putnam County)
Elbow Creek
Elevenmile Creek
Eph Creek
Escambia River
Estero River
Etonia Creek
Fakahatchee River
Fenholloway River
Fish Creek (Putnam County)
Fisheating Creek (Downstream of Fort Center)
Fishing Creek
Fitzpatrick Creek
Fivemile Creek (St Lucie County)
Flora Branch
Forked Creek
Fort George River
Fourmile Creek (Walton County)
Fox Cut
Frazier Creek
Garden Creek
Get Out Creek
Ginhouse Creek (Duval County)
Goodbys Creek
Governors Creek
Graham Creek
Grog Branch
Guana River
Gulley Creek
Haines Creek (a.k.a. Haynes Creek)
Half Creek
Halifax River
Hannah Mills Creek
Harney River
Harrison Creek (Nassau County)
Harrys Creek
Hatchett Creek
Hatchineha Canal
Haulover Creek
Haw Creek (Flagler County)
Henderson Creek
Highland Park Run
Hillsboro Canal
Hillsboro River
Hillsborough River (Downstream of Tampa Water Development Dam)
Hitchens Creek
Hog Creek (Martin County)
Hogan Creek
Hogpen Creek (Duval County)
Holiday Harbor (Duval County)
Holmes Creek (Jackson County)
Hominy Branch
Homosassa River
Honey Creek (Volusia County)
Hontoon Dead River
Hopkins Creek
Horseshoe Creek (Bay and Gulf Counties)
Hospital Creek
Howard Creek (St Lucie County)
Hudson Bayou
Hulett Branch
Huston River
Imperial River
Inconstantion Creek
Indian Creek (Hernando County)
Indian Creek (St Johns County)
Indian River
Indian River North
Istokpoga Creek
Jackson Canal
Jackson Creek (Nassau County)
Jackson River
Joe River
Johnson Creek (Dixie County)
Johnson Creek (Gulf County)
Johnson Slough (Clay County)
Jolly River
Jones Creek (Duval County)
Jones Swamp Creek
Julington Creek
Juniper Creek (Lake County)
Karen Canal
Kendall Creek
Kentucky Branch
Kestner Creek
Kissimmee River
Krueger Creek
L-40 Canal
L-8 Canal
Lafayette Creek
Lake Ajay-Fells Cove Canal
Lake Apopka-Beauclerc Canal
Lake Ashby Canal (and Deep Creek)
Lake Center-Coon Lake Canal
Lake Griffin-Yale Canal
Lake Hart-Ajay Canal
Lake Joel-Myrtle Canal
Lake Joel-Trout Canal
Lake Lizzie-Alligator Canal
Lake Marion Creek
Lake Mary Jane-Hart Canal
Lake Myrtle-Mary Jane Canal
Lake Okeechobee Rim Canal
Lake Okeechobee Waterway
Lake Preston-Myrtle Canal
Lake Worth
Lanceford Creek
Lehigh Canal
Leitner Creek
Little Black Creek (Clay County)
Little Cedar Creek (Duval County)
Little Clapboard Creek
Little Double Creek
Little Econlockhatchee River
Little Fishweir Creek
Little Juniper Creek (Lake County)
Little Manatee River
Little Mud Creek (St Lucie County)
Little Pottsburg Creek
Little River (Biscayne Bay)
Little Rocky Creek (Walton and Okaloosa Counties)
Little Saint Marys River
Little Trout River
Little Wekiva River
Lofton Creek
Lolly Creek
Long Branch (Duval County)
Long Creek (Flagler County)
Lopez River
Lostmans River
Lower Sister Creek
Loxahatchee River
Lumber Creek
Mainard Branch
Manatee Creek
Manatee River (Downstream of Lake Manatee Dam)
Marshall Creek (St Johns County)
Mason Branch (St Johns County)
Matanzas River
McCoy Creek
McCullough Creek (St Johns County)
McGirts Creek
McQueen Creek
Miami Canal
Miami River



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Middle River
Middle River (South and North Fork)
Mill Branch (Putnam County)
Mill Log Creek
Mills Creek (Nassau County)
Moccasin Branch (St Johns County)
Moccasin Slough
Moncrief Creek
Monroe Canal (Seminole County)
Moore's Creek (St Lucie County)
Morrison Creek
Moses Creek
Moultrie Creek
Mud Creek (Putnam County)
Murphy Creek
Myakka River
Myakkahatchee Creek (Sarasota County)
Nassau River
New River (Broward County)
New River (Collier County)
New River (Franklin County)
New Rose Creek
Newcastle Creek
Nichols Creek
Ninemile Creek (Duval County)
NN Creek (Brevard County)
Norris Dead River
North Fork Saint Lucie River
North New River Canal
Ochlockonee River (Portion downstream starting 500 feet south of the ramp at Jack Langston Drive, Sopchoppy, FL.)
Ocklawaha River
Old Channel
Oldfield Creek
Oleta River
Open Creek (Duval County)
Orange Creek
Orange Grove Branch
Orange River
Ortega River
Pablo Creek
Paines Branch
Palatlakaha River
Palm River
Pancho Creek
Pea River
Peace River (Upstream to 0.64 river miles north of old railroad bridge at SW River Street, Ft Ogden, FL)
Pecks Branch
Pellicer Creek
Perdido River
Peters Branch (Clay County)
Peters Creek
Phelps Creek
Philippe Creek
Pine Barren Creek
Pine Log Creek (Bay and Washington Counties)
Pinhook River
Pithlachascotee River (Upstream to the private road bridge that is approximately 2,200 feet upstream of Rowan Road)
Plummer Creek
Polly Creek
Pond Creek (Santa Rosa County)
Poppolton Creek
Porpoise Creek (Dixie County)
Pottsburg Creek
Puckett Creek
Pumpkin Hill Creek
Red House Branch
Reedy Creek (Osceola and Orange Counties)
Ribault River
Rice Creek (Putnam County)(One directly off the St Johns River)
Robinson Creek (St Johns County)
Rock Springs Run
Rocky Creek (Hillsborough County)
Rocky Creek (Okaloosa/Walton)
Rodgers River
Rosalie Creek
Rushing Branch
Saint Francis Dead River
Saint Johns River
Saint Lucie Canal
Saint Lucie River
Saint Marks River (Wakulla, Leon and Jefferson Counties)
Saint Marys River
Saint Sebastian River
Salt Creek (Dixie County)
Salt Creek (Flagler County)
Salt Run
Salt Springs Run (Marion County)
San Carlos Creek
San Julian Creek
San Sebastian River
Sand Beach Branch
Sandy Creek (Bay County)
Sandy Run
Saul Creek (Downstream of Sauls Creek Road)
Sawpit Creek
Scipio Creek
Scoggin Creek
Shad Creek (Brevard County)
Shark River
Shell Creek (Charlotte County) (Downstream of dam for Shell Creek Reservoir)
Shingle Creek (Osceola and Orange Counties)
Shipyard Creek
Shired Creek
Shoal River
Short Canal
Silver Glen Springs Run
Silversmith Creek
Simms Creek
Simpson Creek
Sink Creek (Dixie County)
Sisters Creek
Sixmile Creek
Sixteenmile Creek
Smith Creek (Flagler)
Smith Creek (St. Johns)
Snake Creek (Lake County)
Snell Creek
Soap Creek
Soldier Creek (Escambia County)
Soldier Creek (Seminole County)
Sombrero Creek
Sopchoppy River
South Amelia River
South Fork Black Creek
South Fork Saint Lucie River
South Port Canal
Spring Creek (Wakulla County)
Spring Garden Creek
Spring Warrior Creek
Spruce Creek
St. Cloud Canal
Steinhatchee River
Stokes Creek
Stranahan River
Strawberry Creek
Styles Creek
Summer Haven River (St Johns County)
Suwannee River (Downstream of Purvis Landing and Boat Ramp)
Sweetwater Creek (Hillsborough County)
Swimming Pen Creek
Tarpon River
Taylor Creek (Okeechobee County)
Tenmile Creek (St Lucie County)
Terrapin Creek
Thomas Creek (Nassau and Duval Counties)
Thomas Mill Run
Three Otter Creek
Tiger Creek (Polk County)
Tocoi Creek
Tolomato River
Tomoka River



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Trout -Coon Lake Canal
Trout Creek (St Johns County)
Trout River
Turkey Creek (Brevard County)
Turkey Creek (Okaloosa County)
Turner River
Upper Sister Creek
Waccasassa River
Wacissa River
Wakulla River (Up to and including Wakulla Springs)
Walker Creek (Nassau County)
Wares Creek (Downstream of Bridge for 12th Ave W Bradenton FL)
Warner Creek
Weeki Wachee River
Wekiva River (Seminole and Lake Counties)
Weohyakapka Creek
West Branch Blockhouse Creek
West Palm Beach Canal
West Run Cracker Branch
Wetappo Creek
Wharf Creek
Whitney River
Whittenhorse Creek
Williamson Creek
Willoughby Creek
Wills Branch
Withlacoochee River (Downstream of the Inglis Dam and the Inglis Bypass Spillway in Citrus County)
Woodruff Creek
Wrights Creek (Homes County)
Ximanies Creek
Yellow River
Zeigler Dead River

## Lakes

Adams Lake (Volusia County)
Ajay Lake
Alligator Lake (Osceola County)
Blue Cypress Lake
Blue Lagoon
Brick Lake
Cherry Lake (Lake County)
Clark Lake (Volusia County)
Clear Lake (Orange County)
Coon Lake
Crescent Lake (Putnam-Flagler Counties)
Cypress Lake (Osceola County)
Dead Lakes
Deer Point Lake
Doctors Lake
Dumfoundling Bay
East Lake Tohopekaliga
Fells Cove
Horseshoe Mud Lake
Kimball Lake
Lake Apopka
Lake Ashby
Lake Beauclair
Lake Beresford
Lake Carlton
Lake Center
Lake Cone
Lake Dexter (Volusia County)
Lake Dora
Lake Emma (Lake County)
Lake Eustis
Lake Florence (Brevard County)
Lake Gentry
Lake George (Putnam-Volusia Counties)
Lake Griffin (Lake County)
Lake Harney
Lake Harris (Lake County)
Lake Hart (Orange County)
Lake Hatchineha
Lake Hellen Blazes
Lake Ida (Palm Beach County)
Lake Istokpoga
Lake Jackson (Osceola County)
Lake Jesup
Lake Joel
Lake Kissimmee
Lake Lizzie
Lake Louisa (Lake County)
Lake Lucy (Lake County)
Lake Mangonia
Lake Marion (Polk County)
Lake Mary Jane
Lake Minnehaha (Lake County)
Lake Minneola
Lake Monroe
Lake Myrtle (Osceola County)
Lake Nellie
Lake Okeechobee
Lake Ola
Lake Osborne
Lake Poinsett
Lake Preston
Lake Rosalie
Lake Seminole (Gadsden, Jackson Counties)
Lake Seminole (Pinellas County)
Lake Susan (Lake County)
Lake Tarpon
Lake Tohopekaliga
Lake Washington (Brevard County)
Lake Weohyakapka
Lake Wimico
Lake Winder
Lake Woodruff
Lake Yale
Little Lake George
Little Lake Harris (Lake County)
Little Sawgrass Lake
Lochloosa Lake
Loughman Lake
Marco Lake
Maule Lake
Mud Lake (Lake County)
Orange Lake (Alachua County)
Powell Lake (Bay and Walton Counties)
Puzzle Lake (Seminole and Volusia Counties)
Rodman Reservoir
Ruth Lake
Salt Lake (Pinellas County)
Sawgrass Lake (Brevard County)
Silver Lake (Brevard County)
Spring Garden Lake
Stagger Mud Lake
Tick Island Mud Lake
Tiger Lake
Trout Lake (Osceola County)



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## APPENDIX B

### Excerpts from 40 CFR Part 232

### Select Definitions from 40 CFR § 232.2

***Discharge of dredged material.***

(1) Except as provided below in paragraph (2), the term *discharge of dredged material* means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, but is not limited to, the following:
   (i) The addition of dredged material to a specified discharge site located in waters of the United States;
   (ii) The runoff or overflow, associated with a dredging operation, from a contained land or water disposal area; and
   (iii) Any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.

(2) The term discharge of dredged material does not include the following:

   (i) Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable state.
   (ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material.
   (iii) Incidental fallback.

(3) Section 404 authorization is not required for the following:

   (i) Any incidental addition, including redeposit, of dredged material associated with any activity that does not have or would not have the effect of destroying or degrading an area of waters of the U.S. as defined in paragraphs (4) and (5) of this definition; however, this exception does not apply to any person preparing to undertake mechanized landclearing, ditching, channelization and other excavation activity in a water of the United States, which would result in a redeposit of dredged material, unless the person demonstrates to the satisfaction of the Corps, or EPA as appropriate, prior to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States, as defined in paragraphs (4) and (5) of this definition. The person proposing to undertake mechanized landclearing, ditching, channelization or other excavation activity bears the burden of demonstrating that such activity would not destroy or degrade any area of waters of the United States.
   (ii) Incidental movement of dredged material occurring during normal dredging operations, defined as dredging for navigation in navigable waters of the United States, as that term is defined in 33 CFR part 329, with proper authorization from the Congress or the Corps pursuant



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to 33 CFR part 322; however, this exception is not applicable to dredging activities in wetlands, as that term is defined at §232.2(r) of this chapter.

(iii) Certain discharges, such as those associated with normal farming, silviculture, and ranching activities, are not prohibited by or otherwise subject to regulation under Section 404. See 40 CFR 232.3 for discharges that do not require permits.

(4) For purposes of this section, an activity associated with a discharge of dredged material destroys an area of waters of the United States if it alters the area in such a way that it would no longer be a water of the United States.

Note: Unauthorized discharges into waters of the United States do not eliminate Clean Water Act jurisdiction, even where such unauthorized discharges have the effect of destroying waters of the United States.

(5) For purposes of this section, an activity associated with a discharge of dredged material degrades an area of waters of the United States if it has more than a de minimis (i.e., inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function.

***Discharge of fill material.***

(1) The term discharge of fill material means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials;" after the words "utility lines; and artificial reefs.

(2) In addition, placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: Projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions.

(i) Placement of pilings in waters of the United States that does not have or would not have the effect of a discharge of fill material shall not require a Section 404 permit. Placement of pilings for linear projects, such as bridges, elevated walkways, and powerline structures, generally does not have the effect of a discharge of fill material. Furthermore, placement of pilings in waters of the United States for piers, wharves, and an individual house on stilts generally does not have the effect of a discharge of fill material. All pilings, however, placed in the navigable



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waters of the United States, as that term is defined in 33 CFR part 329, require authorization under section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR part 322).

**40 CFR § 232.3 Activities not requiring permits.**

Except as specified in paragraphs (a) and (b) of this section, any discharge of dredged or fill material that may result from any of the activities described in paragraph (c) of this section is not prohibited by or otherwise subject to regulation under this part.

(a) If any discharge of dredged or fill material resulting from the activities listed in paragraph (c) of this section contains any toxic pollutant listed under section 307 of the Act, such discharge shall be subject to any applicable toxic effluent standard or prohibition and shall require a section 404 permit.

(b) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraph (c) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernable alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

Note: For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to affect such conversion. A conversion of section 404 wetland to a non-wetland is a change in use of an area of waters of the U.S. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

(c) The following activities are exempt from section 404 permit requirements, except as specified in paragraphs (a) and (b) of this section:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (d) of this section.

(ii)(A) To fall under this exemption, the activities specified in paragraph (c)(1) of this section must be part of an established (*i.e.*, ongoing) farming, silviculture, or ranching operation, and must be in accordance with definitions in paragraph (d) of this section. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

(B) Activities which bring an area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit whether or not it was part of an established farming, silviculture or ranching operation.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge



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abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, wiers, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the United States. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a State has an approved program under section 208(b)(4) of the Act which meets the requirements of section 208(b)(4)(B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the United States shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the United States;

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

(iv) The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within the waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;



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(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the United States shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic Rivers System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(d) For purpose of paragraph (c)(1) of this section, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality, or yield.

(2) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(3)(i) Minor drainage means:

(A) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit;

(B) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;



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(C) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production or rice, cranberries, or other wetland crop species.

Note: The provisions of paragraphs (d)(3)(i) (B) and (C) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.

(D) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exemption.

(ii) Minor drainage in waters of the United States is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adequate to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming).

In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(4) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing, as described above, will never involve a discharge of dredged or fill material.

(5) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.



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(e) Federal projects which qualify under the criteria contained in section 404(r) of the Act are exempt from section 404 permit requirements, but may be subject to other State or Federal requirements.

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## APPENDIX C

### Guidance for Conducting an Alternatives Analysis

*(Based on guidance issued by the Corps of Engineers Jacksonville District – "Information for Preparing an Alternatives Analysis Under Section 404", June 2014)*

As part of the individual permit application review process, proposed projects undergo an alternatives analysis using Rule 62-331.053, F.A.C., and this section. A permit cannot be issued if there is a practicable alternative to the proposed activity which would have less adverse impact on the aquatic ecosystem, as long as the alternative does not have other significant adverse environmental consequences.

The level of detail in an alternatives analysis shall be commensurate with the scale of the adverse environmental effects of the project. Analysis of projects proposing greater adverse environmental effects shall be more detailed and explore a wider range of alternatives than projects proposing lesser effects.

Below are suggested steps to follow in providing the necessary information for the Agency to consider in the alternatives analysis:

Step 1: Define Purpose and Need

At the beginning of an alternatives analysis, the applicant shall clearly state the overall project purpose and need (examples are below). Significant thought shall be applied when developing the project purpose as it will drive much of the alternatives analysis. The overall project purpose must be specific enough to define a permit applicant's needs, but not so restrictive to preclude other alternatives. It shall also not be too wide-ranging without consideration for the applicant's real needs, as the geographic boundaries in the purpose define the scope of the analysis. For example:

1) *To develop a 225-lot single-family residential development at the southeast intersection of Interstate 10 and Toledo Blade Boulevard.*

   This example is too restrictive because there are no alternative sites to consider. It also unnecessarily details the exact number of lots, which can reduce the number of reasonable or practicable alternatives.

2) *To develop a residential development in Northwest Florida.*

   This example is too wide in scope if the applicant is actually focusing on a certain portion of a certain city or county to locate the project. This would also create an unmanageable number of alternatives.

3) *To develop a single-family residential subdivision near Interstate 10 in Crestview, Florida, to meet local demand for this type of housing.*

   This is an appropriate overall project purpose as it narrows the geographic scope to a reasonable and manageable size. It clearly defines what the project involves (single-family residences rather than "housing" that could also mean townhouses or apartments), the actual target market area (near Interstate 10 in Crestview), and the need for the project (local demand).

The applicant's proposed overall project purpose will be carefully considered, but if the Agency cannot concur with it as submitted, the Agency is required to modify it. Once the Agency has placed the project on public notice, the applicant must use the overall project purpose as stated in that public notice or the overall project purpose as provided back to the applicant if the Agency has modified their original project



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purpose. If the applicant has already performed an alternatives analysis using a project purpose the Agency cannot concur with, (e.g., it is too restrictive or too broad in geographic scope), the analysis may need to be revised to accurately include reasonable and practicable alternatives.

Additional information about the proposed overall project purpose shall also be provided, including details about the relevant market conditions and area, location, history, and other factors that influence or constrain the intended nature, size, level of quality, price class, or other characteristics of the project. Information that further describes why particular geographic boundaries were chosen also will assist the Agency in its review.

Step 2: Identify Alternatives

The applicant must list and briefly describe alternatives that could meet the overall project purpose. This list, at a minimum, must include the following information:

1) The applicant's preferred alternative (the project proposed in the permit application)

2) Alternatives that would involve no dredging or filling in state-assumed waters. This "No-Action" alternative comprises one or more alternatives that would not involve a dredging or filling in state-assumed waters, which could involve reconfiguring the project to avoid all state-assumed waters on the site, siting the project entirely in uplands offsite, or no-action, i.e. not implementing the project. Although the "No-Action" alternative might not seem reasonable initially, it must always be included in the analysis. The no-action alternative can serve several purposes. First, it may be a reasonable alternative, especially for situations where the impacts are great, and the need is relatively minor. Second, it can serve as a benchmark, enabling decision makers to compare the magnitude of the environmental effects of the action alternatives.

3) Alternative offsite locations, including those that might involve less adverse impact to state-assumed waters.

4) Onsite alternatives that would involve less adverse impact to state-assumed waters. These include modifications to the alignments, site layouts, or design options in the physical layout and operation of the project to reduce the amount of impacts to state-assumed waters.

5) Alternatives that would involve greater adverse impact to state-assumed waters but avoid or minimize other significant adverse environmental consequences including offsite and onsite options (Alternatives that meet these criteria are uncommon).

Alternatives that are clearly unreasonable shall be identified and eliminated (not evaluated further). For example, alternative sites that are far too small to accommodate the project or that lie outside the geographic boundaries identified in the overall project purpose can be eliminated. This step of the analysis is not intended to rule out alternatives that are "unreasonable" according to the applicant, but those that would be considered "unreasonable" to an objective third-party. The Agency will verify that the criteria used for screening alternatives are objective and not so restrictive that they eliminate actual reasonable alternatives. The applicant must list the alternatives that were initially considered then eliminated from further study because the applicant feels they failed to pass this first round of screening. The Agency will review this list and determine if elimination of these alternatives is appropriate.

The maximum number of reasonable alternatives to study further will vary and depends on the nature and scope of the proposed project; however, there typically should be multiple alternatives to consider. The number of alternatives listed should be greater for projects involving greater impacts. This is the

preliminary list of reasonable alternatives; alternatives that are not practicable will be eliminated from further consideration in the later stages of the analysis.

In many instances, there will be alternatives determined to be both unreasonable and impracticable, as these terms can be nearly synonymous when used in these analyses. Regardless of whether the applicant identifies an alternative as unreasonable or as impracticable, it is imperative the applicant describe, in the context of the overall project purpose and need for the project, why each non-selected alternative should be eliminated from further analysis. The Agency must be able to independently review and verify this information and each step in the applicant's alternative analysis.

Step 3: Describe and Analyze Alternatives for Practicability

This step also addresses onsite and offsite alternatives and determines which are practicable and which are not. Practicable is defined here as meaning the alternative is available, is able to achieve the overall project purpose, and is feasible considering cost, existing technology, and/or logistics in light of the overall project purpose.

Alternatives shall be clearly listed and numbered for ease of reference and comparison. *At a minimum,* the following information for each alternative site examined shall be provided:

1) *General site information:*

   a) specific parcel information including, but not limited to; parcel ID numbers, aerial photos, location maps, FLUCCS codes and GPS coordinates;

   b) presence, quantity and quality of state-assumed waters;

   c) County/City zoning designation;

   d) the presence of any federally-listed threatened or endangered species or their critical habitat, and/or the presence of any historical properties or resources; and,

   e) site infrastructure (Will the site require new access roads/infrastructure? What are the potential impacts associated with these improvements?).

2) *The practicability of each alternative:*

   a) Practicability: alternatives that are practicable are those that are available and capable of being done by the applicant after considering the following (in light of the project purpose):

      i) Cost (For example, the costs associated with various infrastructure components such as roadways or utilities, including upgrades to existing infrastructure components or the need to establish new infrastructure components, may affect the viability of a particular alternative. A location far from all existing infrastructure (roads, water, sewer, and/or electricity) might not be practicable considering the costs associated with upgrading/establishing the infrastructure necessary to use that site. However, just because one alternative costs more than another, this does not mean that the more expensive alternative is entirely impracticable. Cost is analyzed in the context of the overall cost of the project and whether it is unreasonably expensive or exorbitant. In addition, cost is an objective, industry-neutral inquiry that does not consider an individual applicant's financial standing. The data used for any cost or financial feasibility analysis must be current with respect to the time of the alternatives analysis.);



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ii) Existing Technology (The alternatives examined shall consider the limitations of existing technology yet incorporate the most efficient/least-impacting construction methods currently available. For example, alternatives to mining limestone or other minerals may not be practicable considering a lack of technology to allow replacement of that mineral resource in the mass-production of concrete; however, engineered retaining walls can be incorporated into an alternative that substantially minimizes wetland impacts by eliminating fill slopes.); and,

iii) Logistics (The alternatives examined may incorporate an examination of various logistics associated with the project, i.e., placement of facilities within a required distance, utilization of existing storage or staging areas, and/or safety concerns. Examples of alternatives that may not be practicable considering logistics are a land-locked parcel that cannot be accessed by public roads or a site that is too small to meet the overall project purpose).

b) Availability: If it is otherwise a practicable alternative, an area not presently owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the overall purpose of the proposed activity can still be considered a practicable alternative. In other words, if an applicant does not own an alternative parcel, that does not rule that parcel out as a practicable alternative. The applicant shall consider and anticipate alternatives available during the timeframe that the Agency conducts its alternatives analysis. An evaluation of availability for purchase and projected cost of such a purchase may be incorporated into this discussion.

c) Other information: any other information that conveys the practicability of the alternatives reviewed in consideration of the overall project purpose shall be included.

An alternatives comparison matrix (see example below) is an effective way to present and compare the main parameters that were considered during the evaluation.

To allow for an objective evaluation, the comparison of the plan(s) for the proposed and alternative sites shall be framed for "yes" or "no" answers. A narrative shall accompany the matrix defining the practicability factors chosen and further explaining any "no" answers with objective and verifiable data. Practicability of the "no-action" alternative also must be addressed in this narrative and, if applicable, also included in the matrix. The information shall explain the consequences on the applicant and the public if the project is not implemented. Any remaining alternatives that are found to be practicable will move on to the next and final step.

If an alternative can be easily documented to be a more environmentally damaging alternative and this can be clearly described within the narrative and matrix, then this step and the following step can be combined. This will save the applicant time and expense; however, it is only appropriate for alternatives where this distinction is clear.



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Example Alternative Comparison Matrix for Practicability

| Category | Practicability Factor | Alternative 1 Applicant's Preferred Alternative | Alternative 2 | Alternative 3 | Alternative 4 | Alternative 5 |
|---|---|---|---|---|---|---|
| **Availability - Zoning** | Existing Zoning Appropriate or Potential for Zoning Change? | YES<br>Zoned for this project type | YES<br>Zoned for this project type | YES<br>Zoned for this project type | YES<br>Zoned for agriculture but County has expressed support for the project | YES<br>Zoned for this project type |
| **Availability - Acquisition** | Available for Acquisition? | YES<br>Applicant owns the parcel | YES | YES | YES | YES |
| **Cost – Acquisition** | Reasonable Acquisition Costs? | YES<br>Applicant owns the parcel | YES | YES | YES | NO<br>Seller will only sell all 350 acres without subdividing |
| **Cost – Historic or Cultural Resource Mitigation** | Costs feasible for mitigating impacts to historic and cultural resources found onsite? | YES<br>No historic or cultural resources found onsite | YES<br>No historic or cultural resources found onsite | YES<br>No historic or cultural resources found onsite | NO<br>If impacts to historic resources onsite allowed, costs to mitigate those impacts will increase project costs from $xxxx to $xxxx | YES<br>No historical or cultural resources found onsite |
| **Cost – Other** | Other Costs Feasible? | YES | YES<br>Additional costs for extensive retaining walls | YES | NO<br>Costs to connect to utilities will increase project costs from $xxxx to $xxxx | NO<br>Extensive use of retaining walls and construction of two bridges increase project costs from $xxxx to $xxxx |
| **Existing Technology** | Topography and other Site Conditions Feasible for Construction of Project? | YES | YES<br>With extensive use of engineered retaining walls and drainage systems | YES | YES | YES<br>With extensive use of retaining walls and bridges over Clear Creek |
| **Logistics – Parcel Size** | Sufficient Parcel Size? | YES<br>40 acres | YES<br>48 acres | NO<br>21 acres | NO<br>17 acres | YES<br>350 acres |
| **Logistics – Utilities** | Availability of Utilities? | YES | YES | YES | NO<br>6 miles to existing water, sewer, and power | YES |
| **Logistics – Access** | Availability for Access? | YES<br>County right-of-way on east property boundary | YES<br>County right-of-way to northwest property corner | NO<br>Landlocked by private parcels and request for an easement was denied | NO<br>Landlocked by private parcels and request for an easement was denied | YES<br>County right-of-way to west side of property |

Step 4: Identify the Least Environmentally Damaging Practicable Alternative

1) The Least Environmentally Damaging Practicable Alternative (LEDPA) must be selected. Therefore, using the same numbering system from the step above, identify the environmental impacts for each remaining practicable alternate site. For each remaining site:

   a) describe the impacts (beneficial or adverse) to the aquatic ecosystem associated with each of the remaining alternatives

   b) describe the overall (beneficial or adverse) environmental impacts associated with each of the remaining alternatives

   c) be specific and quantitative in the identification of impacts (Rather than "Alternative A would result in a large impact to low quality wetlands and ditches that are sparsely vegetated and impact some wildlife." use "Alternative A would result in filling over 2.1 acres of fire-suppressed wet pine flatwoods wetland and 1.2 acres of wet ditches that contain scattered emergent wetland vegetation. Using the Uniform Mitigation Assessment Method, the function and value of the flatwoods wetland and ditch system have been calculated at 0.6 and 0.2, respectively. Work affecting 0.7-acre of potential flatwoods salamander habitat would also result from siting the project at this location."

2) If multiple practicable alternatives remain, and/or many environmental/relevant factors are involved, another matrix that contains only environmental/relevant parameters (e.g., wetland functional units, listed species, high value upland habitat, historic properties) can be used to assist in illustrating the proposed LEDPA. Emphasis shall be placed on impacts to the aquatic environment through functional unit loss of wetlands or other state-assumed waters that would be affected or eliminated by each alternative. An example matrix is below.

**Example Environmental Factor Matrix**

| **Environmental Factors** | **Alternative 1 Applicant's Preferred Alternative** | **Alternative 2** |
|---|---|---|
| **Wetland Impacts (Acres)** | 2.0 | 6.0 |
| **Loss in Wetland Function (UMAM Functional Units)** | 1.4 | 3.9 |
| **Impacts to Federally Listed Threatened or Endangered Species** | No | No |
| **LEDPA** | Yes | No |

3) Conclude the alternatives analysis with a description of the alternative proposed to be the LEDPA, reiterating the rationale for this determination. Additionally, the rationale shall include statements clearly demonstrating how the following presumptions have been rebutted:

   a) If a project does not need to be in a specific aquatic site, such as a wetland, to meets its basic purpose (i.e., the project is not "water-dependent"), it is presumed that alternatives that do not affect special aquatic sites are available.

b) If a project involves dredging or filling in a special aquatic site, a practicable alternative located in uplands is presumed to have less adverse impact on the aquatic ecosystem.



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## APPENDIX D

### 307(a)(1) List of Toxic Pollutants (Codified in 40 CFR § 401.15)

**§ 401.15 Toxic pollutants.** The following comprise the list of toxic pollutants designated pursuant to section 307(a)(1) of the Act:

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Aldrin/dieldrin [1] ([1] effluent standard promulgated (40 CFR Part 129).)
5. Antimony and compounds [2] ([2] the term compounds shall include organic and inorganic compounds.)
6. Arsenic and compounds
7. Asbestos
8. Benzene
9. Benzidine
10. Beryllium and compounds
11. Cadmium and compounds
12. Carbon tetrachloride
13. Chlordane (technical mixture and metabolites)
14. Chlorinated benzenes (other than di-chlorobenzenes)
15. Chlorinated ethanes (including 1,2-di-chloroethane, 1,1,1-trichloroethane, and hexachloroethane)
16. Chloroalkyl ethers (chloroethyl and mixed ethers)
17. Chlorinated naphthalene
18. Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
19. Chloroform
20. 2-chlorophenol
21. Chromium and compounds
22. Copper and compounds
23. Cyanides
24. Ddt and metabolites [1]
25. Dichlorobenzenes (1,2-, 1,3-, and 1,4-di-chlorobenzenes)
26. Dichlorobenzidine
27. Dichloroethylenes (1,1-, and 1,2-dichloroethylene)
28. 2,4-dichlorophenol
29. Dichloropropane and dichloropropene
30. 2,4-dimethylphenol
31. Dinitrotoluene
32. Diphenylhydrazine
33. Endosulfan and metabolites
34. Endrin and metabolites [1]
35. Ethylbenzene
36. Fluoranthene
37. Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
38. Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane
39. Heptachlor and metabolites
40. Hexachlorobutadiene
41. Hexachlorocyclohexane
42. Hexachlorocyclopentadiene
43. Isophorone



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44. Lead and compounds
45. Mercury and compounds
46. Naphthalene
47. Nickel and compounds
48. Nitrobenzene
49. Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
50. Nitrosamines
51. Pentachlorophenol
52. Phenol
53. Phthalate esters
54. Polychlorinated biphenyls (pcbs) [1]
55. Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenz-anthracenes, and indenopyrenes)
56. Selenium and compounds
57. Silver and compounds
58. 2,3,7,8-tetrachlorodibenzo-p-dioxin (tcdd)
59. Tetrachloroethylene
60. Thallium and compounds
61. Toluene
62. Toxaphene [1]
63. Trichloroethylene
64. Vinyl chloride
65. Zinc and compounds



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