



State 404 Program Status and Updates

Division of Water Resource Management

December 2, 2020



Acronyms

- **Acronyms used in this presentation:**
 - **DEP – Florida Department of Environmental Protection**
 - **EPA – US Environmental Protection Agency**
 - **FWC – Florida Fish and Wildlife Conservation Commission**
 - **USFWS – US Fish and Wildlife Service**
 - **SHPO – State Historic Preservation Office**
 - **THPO – Tribal Historic Preservation Office(r)**
 - **WMD – Water Management District**



Rulemaking History

- **Legislation passed in 2018**
- **Notice of Rule Development published May 11, 2018**
- **Three public workshops:**
 - **Tallahassee/webinar: May 30, 2018**
 - **Orlando: May 31, 2018**
 - **Fort Myers: June 1, 2018**
- **Notice of Proposed Rule published February 19, 2020**
- **Certification package filed July 21, 2020**
- **Will become effective upon EPA's publication of approval in Federal Register**



Why Assumption?

State assumption of the 404 program would provide a streamlined permitting procedure where both federal and state requirements are addressed by state permits. This would provide greater certainty to the regulated community, conserve resources of both applicant and regulator, and would afford the state greater control over its natural resources while complying with federal law.



Why Assumption? – 2

- **State Environmental Resource Permitting (ERP) and federal 404 review processes overlap approximately 85%**
- **Removes duplicative review while maintaining same or higher level of environmental protection**
- **State 404 Program must be at least as stringent as federal government's**



Steps to Assumption

Step 1: Rulemaking

- **Completed July 21, 2020**
- **Rules are only one part of DEP's assumption application package to EPA**
- **Finalized rules were submitted, along with other components of the assumption package, as part the federal assumption process, which includes a thorough review by our federal partners as well as a public engagement process for the citizens of Florida**



Steps to Assumption – 2

Step 2: Assumption package

- **Assumption Package contains:**
 - **Memoranda of Agreement/Understanding or Operating Agreements**
 - EPA, U.S. Army Corps of Engineers (USACE), FWC/USFWS, SHPO
 - **Program description**
 - **Finalized rules/statutes**
- **Submitted to EPA on August 20, 2020**
- **EPA published public notice on September 16, 2020**
(Docket No. EPA-HQ-OW-2018-0640, FRL-10014-54-Region 4)



Steps to Assumption – 3

Step 3: EPA Review/Action

- We are currently here in Step 3
- EPA is reviewing package and collecting public comments
 - Comment period ends November 2, 2020
 - EPA public meetings scheduled October 21, and 27, 2020
 - Package available for download:
<https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/404-assumption>
- EPA anticipates making a decision by December 17, 2020



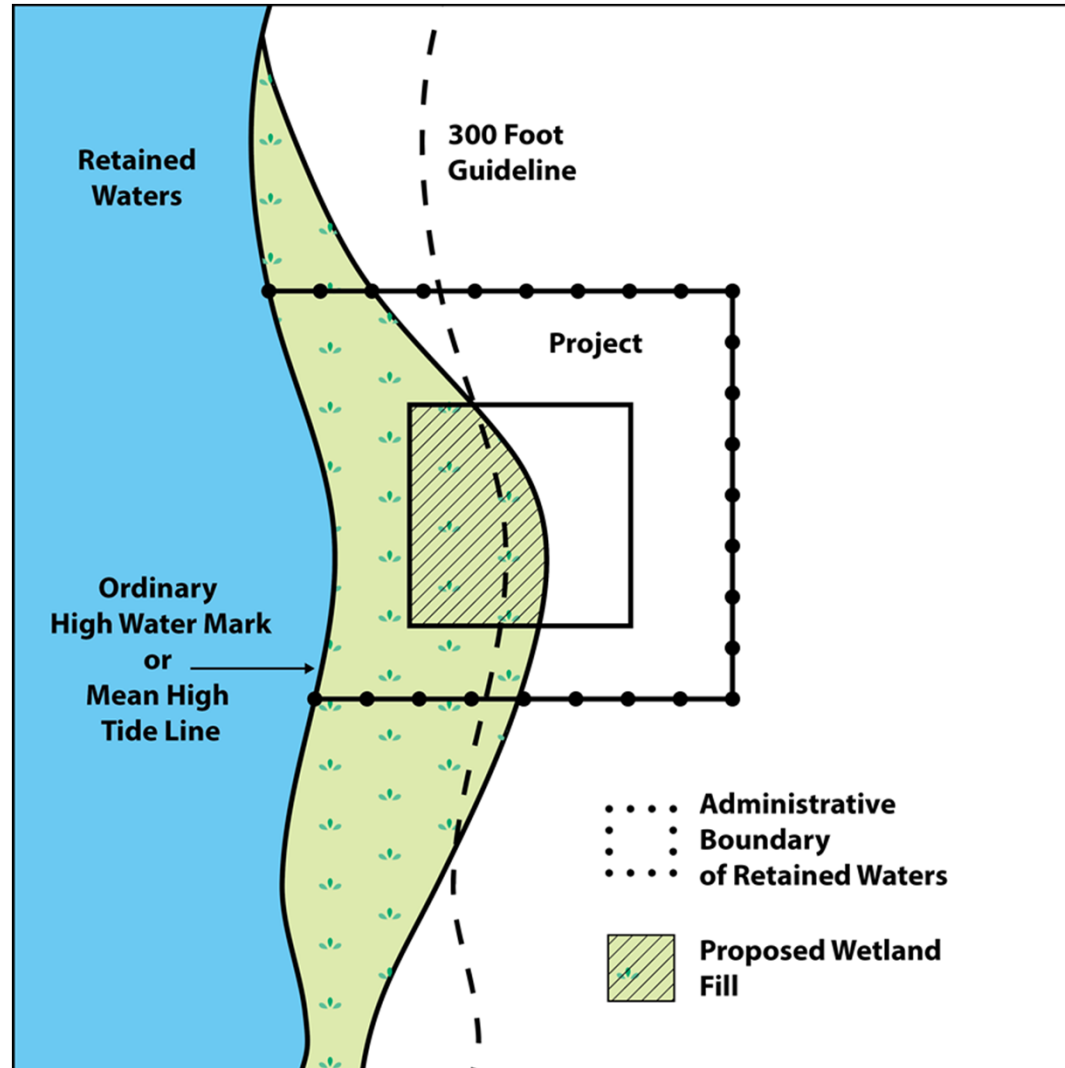
Jurisdiction

State 404 Program

- **Delineation using existing state method, Chapter 62-340, Florida Administrative Code (F.A.C.)**
- **State-assumed waters: those waters of the United States (wetlands and other surface waters) not retained by USACE**
- **Retained waters: those waters of the United States (wetlands and other surface waters) where 404 jurisdiction remains with USACE:**
 - **Tidal waters**
 - **Currently navigable waters (see State 404 Handbook, Appendix A)**
 - **Those adjacent waters within an administrative boundary**

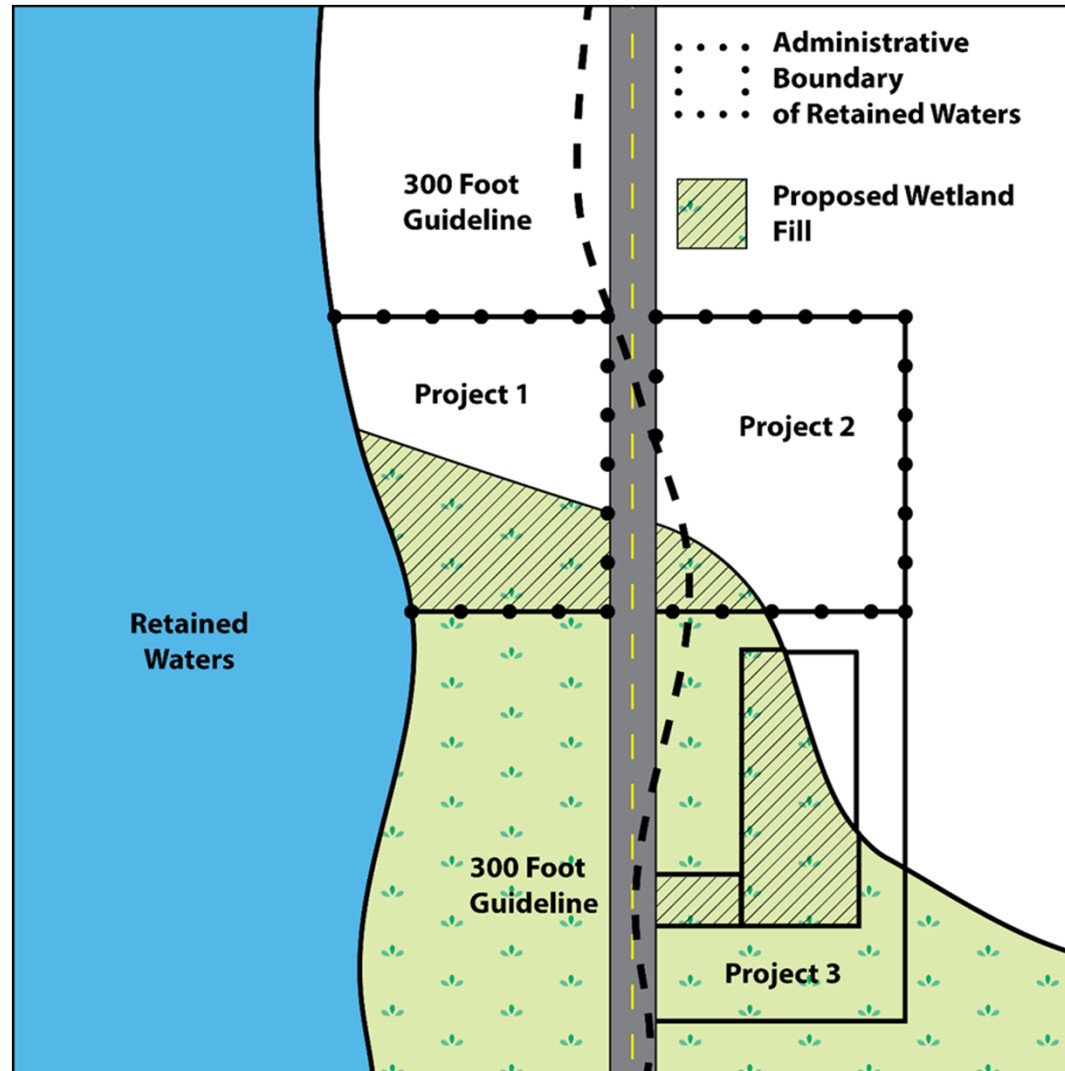


Example 1



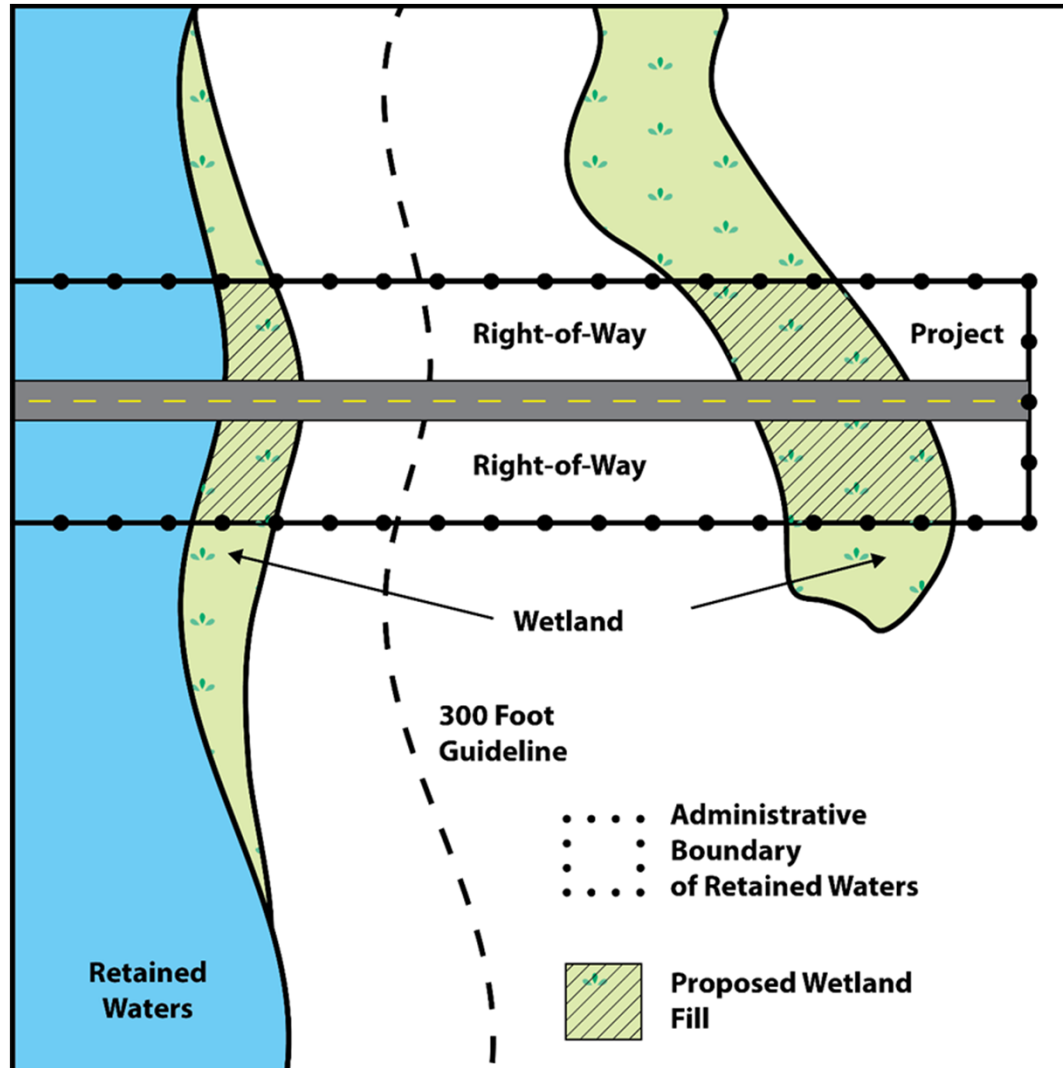


Example 2





Example 3





Chapter 62-331, F.A.C.

Purpose

- **Chapter 62-331, F.A.C., created to bring in requirements of federal law not already addressed by existing state law**
- **References Chapter 62-330, F.A.C., (ERP) as much as possible**



Chapter 62-331, F.A.C. – 2

Contents

- **Procedures required by federal law**
 - **Sequence of review**
 - **Public notice procedures**
 - **EPA review of certain projects**
- **Elements of review not currently in ERP**
 - **Alternatives analysis**
 - **Mitigation hierarchy**
 - **Aesthetics and economics**
 - **Definitions**



Chapter 62-331, F.A.C. – 3

Contents (cont.)

- **General permits**
 - **Modeled after existing USACE Nationwide Permits**
- **Exemptions**
 - **Existing ERP exemptions not applicable to State 404 Program**
 - **State 404 exemptions taken from federal law**
 - **See State 404 Handbook, Appendix B**
- **Elements of state law that conflict with federal law do not apply to State 404 Program**
 - **Default permitting timelines do not apply**
 - **See State 404 Handbook, section 8.4**



Chapter 62-330, F.A.C.

Minor Revisions

- **Delineation data form**
- **New application form section**
- **Form name changes to include 404**
- **Voluntary ERP review timeframe waiver**
- **Minor changes needed for ERP**
 - **Sufficient property interest for utilities**
 - **Adoption of updated Applicant's Handbooks Volume II for SWFWMD, SFWMD**



Rule Documents

Rules/Handbooks/Forms

- **All are available in the assumption package**
 - **Folder B – Program Description**
 - **Sub-folder f – forms**
 - **Folder F – State Statutes and Regulations**
- **Download:**
<https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/404-assumption>



How to Apply

- **Check 404 jurisdiction**
 - Retained or assumed waters?
- **Use appropriate ERP application form**
 - Matrix in 404 Handbook, section 4.3
- **Send to agency that will process ERP**
 - See DEP/WMD Operating Agreements referenced in Chapter 62-113, F.A.C.
 - WMD will send copy of application to DEP if a State 404 permit is required
- **Remember waiver box**
- **No additional fee for State 404 application**



Review Items

- **Alternatives Analysis**
 - 404 Handbook, Appendix C
- **Mitigation Hierarchy**
 - 404 Handbook, section 8.5.1
 - Required by federal law
 - Federal credits will be required (mitigation bank/in-lieu fee credits)
- **Federal/State Listed Species**
 - USFWS/FWC
- **Historical and Cultural Resources**
 - SHPO/THPOs



New Processes

- **Public Notice**
 - Individual permit applications
 - Settlement actions (Enforcement)
- **EPA Review**
 - Non-waiver categories



Contact Information

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