

62-346.051 Exemptions from Permitting.

(1) The activities set forth in this section do not require an environmental resource permit under this chapter or Chapter 62-341, F.A.C., as applicable, and may be conducted without notice to the Department, unless otherwise specifically provided herein or in Sections 373.406, 373.4145(3), or 403.813, F.S. The performance of activities in accordance with the provisions of the exemptions set forth in this section does not relieve the person or persons who are using the exemption or who are constructing or otherwise implementing the activity from meeting the permitting, authorization, or performance requirements of other rules of the Department, the Board of Trustees, the water management district, or other federal, state, or local governmental agencies. Any person proposing an activity under this section is also advised that such activity is subject to obtaining any required Works of the District permit pursuant to Chapter 40A-6, F.A.C. (March 2, 2000), if the work involves connection with, placement of structures in or across, or otherwise makes use of Works of the District.

(2) Activities that are governed by Section 373.4145(6), F.S., which are regulated in accordance with the statutory and rule provisions applicable under Section 373.4145, F.S. (1994).

(3) Activities exempt under Section 373.406, F.S.

(4) Bridges, Driveways, and Roadways.

(a) The replacement or repair of existing open-trestle foot bridges and vehicular bridges in accordance with Section 403.813(1)(I), F.S.

(b) The construction or maintenance of culverted driveway or roadway crossings and bridges of wholly artificial, non-navigable drainage conveyances, provided that:

1. The construction project area does not exceed one acre and the construction is for a discrete project that is not part of a larger plan of development that requires permitting under this chapter;

2. The artificial drainage conveyance in its existing condition is not more than 4 feet deep, measured from the top of bank to the bottom of the artificial drainage conveyance;

3. The person performing the activity shall ensure that the size and capacity of the culvert will be adequate to pass normal high water stages of the artificial drainage conveyance without causing adverse impacts to upstream or downstream property, but the culvert shall not be larger than one 24-inch diameter pipe, or its equivalent; and in no instance shall the culvert provide a smaller cross-sectional area or discharge capacity than any upstream culvert;

4. The elevation of the culvert invert shall be at the existing bottom grade of the artificial drainage conveyance;

5. The length of the driveway or roadway crossing the artificial drainage conveyance shall not exceed 30 feet from top of bank to top of bank;

6. The top width of the driveway or roadway shall not exceed 20 feet, the toe-to-toe width shall not exceed 40 feet, and side slopes shall be no steeper than 3 feet horizontal to 1 foot vertical;

7. Clean fill used for the crossing shall be obtained from an upland borrow pit or from a dredge site that is in compliance with the requirements of Part IV of Chapter 373, F.S.

8. There shall be no additional dredging, filling, or construction activities within the artificial waterway or project area, except those directly involved in the construction or operation and maintenance of the culverted crossing and those exempted from regulation under Part IV, Chapter 373, F.S.;

9. All temporary fill in construction areas must be removed and regraded to original elevations and revegetated;

10. The person performing the exempt activity must implement measures for erosion and pollution control using best management practices, including turbidity curtains or similar devices and other site specific practices, in strict adherence to *“The Florida Stormwater, Erosion, and Sediment Control Inspector’s Manual”* (Florida Department of Environmental Protection and Florida Department of Transportation, Sixth Impression, April 2006), which is hereby adopted and incorporated by reference, the *“State of Florida Erosion and Sediment Control Designer and Reviewer Manual”* (Prepared for Florida Department of Transportation & Florida Department of Environmental Protection by HydroDynamics Incorporated in cooperation with Stormwater Management Academy, June 2007), which is hereby adopted and incorporated by reference, and the Florida Department of Transportation’s *“Standard Specifications for Road and Bridge Construction,(2007),”* which is hereby adopted and incorporated by reference, to prevent violations of state water quality standards. Temporary erosion control measures must be implemented prior to and during construction, and permanent erosion control measures for all exposed soils must be completed within seven calendar days of the most recent construction activity. Information on how a copy of how these materials may be obtained is contained in subsection 62-346.091(2), F.A.C.;

11. Any spoil material from construction or maintenance must be used or disposed of on an upland portion of the property or must be transported off site and deposited on a self-contained upland spoil site that is in compliance with the permitting requirements of this chapter, as applicable;

12. If dewatering is performed, all temporary fill dikes and dewatering discharges shall be installed and constructed so that no upstream flooding or impoundment occurs and to prevent siltation, erosion or turbid discharges in violation of state water quality standards. Any temporary works shall be completely removed, and all areas upstream and downstream from the crossing shall be restored to grades, elevations and conditions that existed before the construction;

13. This exemption shall apply only to a maximum of two crossings on any total land area with a minimum distance of 500 feet between crossings; and

14. This exemption shall not apply to activities involving relocation or other alteration of all or part of the artificial drainage conveyance, or construction for other than the proposed culvert or bridge crossing.

(c) The construction of the following minor roadway safety projects, provided that the capacity of existing swales, ditches or other stormwater management systems is not reduced, the projects are not located in wetlands or other surface waters, and the projects include best management practices during construction to prevent secondary impacts in adjacent wetlands or other surface waters due to erosion and sedimentation:

1. Sidewalks that have a width of six feet or less;
2. Turn lanes less than 0.25 mile in length, and other intersection improvements;
3. Road widening and shoulder paving projects which do not result in the creation of additional traffic lanes.
4. Road grading that involves no change in existing road surface elevations, and pavement resurfacing of existing roads, provided the activities do not result in the paving of travel lanes that are not already paved, except as otherwise provided in paragraph 62-346.051(4)(d), F.A.C.

(d) The repair, stabilization, or paving of existing county maintained roads and the repair or replacement of bridges that are part of the roadway, in accordance with Section 373.4145(3)(e), F.S., provided:

1. The road and associated bridge were in existence and in use as a public road or bridge, and were maintained by the county as a public road or bridge on or before January 1, 2002;
2. The construction activity does not realign the road or expand the number of existing traffic lanes of the existing road; however, the work may include the provision of safety shoulders, clearance of vegetation, and other work reasonably necessary to repair, stabilize, pave, or repave the road, provided that the work is constructed by generally accepted engineering standards;
3. The construction activity does not expand the existing width of an existing vehicular bridge in excess of that reasonably necessary to properly connect the bridge with the road being repaired, stabilized, paved, or repaved to safely accommodate the traffic expected on the road, which may include expanding the width of the bridge to match the existing connected road. However, no debris from the original bridge shall be allowed to remain in waters of the state, including wetlands;
4. Best management practices for erosion control shall be employed as necessary to prevent water quality violations. Such practices are outlined in Part IV, Applicant's Handbook, Volume I;
5. Roadside swales or other effective means of stormwater treatment must be incorporated as part of the project;
6. No more dredging or filling of wetlands or waters of the state is performed than that which is reasonably necessary to repair, stabilize, pave, or repave the road or to repair or replace the bridge, in accordance with generally accepted engineering standards; and
7. Notice of intent to use the exemption must be provided to the Department 30 days prior to performing any work under the exemption.

In accordance with Section 373.4145(3)(e), F.S., the adoption of the noticed general permit in Rule 62-341.448, F.A.C., does not supersede this exemption.

(5) Docking, Pier, and Boat Ramp Facilities – Construction, Replacement or Repair.

(a) The construction, replacement or repair of pilings and dolphins associated with private docking facilities or piers, and the installation and repair of private docks, piers, and recreational docking facilities, or piers and recreational docking facilities of local governmental entities in accordance with Section 403.813(1)(b), F.S. This exemption shall include the construction and repair of structures on the dock, such as gazebos, or adjacent to the dock, such as boat shelters, provided such structures are not enclosed with walls and doors, are not used for residential or commercial purposes, or storage of materials other than those associated with water dependent recreational use, and provided the structures, including any roof area extending outside the footprint of the dock, does not

exceed, together with the docking facility, the limitations specified in Section 403.813(1)(b), F.S. Any dock and associated structure shall be the sole dock constructed pursuant to this exemption as measured along the shoreline for a minimum distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot. For the purposes of this exemption, multi-family living complexes and other types of complexes or facilities associated with the proposed private dock shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property.

(b) Construction of private docks of 1,000 square feet or less of over-water surface area in artificially created waterways in accordance with Section 403.813(1)(i), F.S.

(c) The replacement or repair of existing docks and piers, including mooring piles, in accordance with Section 403.813(1)(d), F.S., provided that the structure to be repaired or replaced must be functional for its intended or designed purpose before this exemption may be used, unless such structure has been rendered non-functional by a discrete event, such as a storm, flood, accident, or fire.

(d) The construction and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists, or the construction and maintenance to design specifications of boat ramps open to the public in any wetlands or other surface waters where navigational access to the proposed ramp exists in accordance with Section 403.813(1)(c), F.S. Except as otherwise provided in this subsection, the installation of docks that are associated with and adjoining boat ramps constructed pursuant to this exemption shall be limited to an area of 500 square feet or less over wetlands and other surface waters. For the purpose of this exemption, artificial bodies of water shall include residential canal systems, canals permitted by a water management district created under Section 373.069, F.S., and artificially created portions of the Florida Intracoastal Waterway.

(e) The construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts in accordance with Section 403.813(1)(s), F.S.

(6) Fish Attractors, Freshwater – Construction, alteration, maintenance, operation, and removal of freshwater fish attractors by the Florida Fish and Wildlife Conservation Commission, U.S. Forest Service, and county and municipal governments, provided that the material to be used shall be clean concrete, rock, brush, logs, or trees, and shall be free of soils, preservatives, oil, grease, debris, litter, putrescible substances, used appliances, asphalt material, tires, or other pollutants, and shall be firmly anchored to the bottom of the waterbody. The size of an individual fish attractor shall not exceed one quarter of an acre in area. The material shall be placed so that the top of the fish attractor is at least three feet below the surface of the water at ordinary low water and shall be outside any posted navigational channels. No fish attractor material shall be placed on or in areas vegetated by native aquatic vegetation. The site shall be marked with a buoy or buoys to ensure that no material is deposited outside of the site.

(7) Maintenance and Restoration of Systems.

(a) Maintenance activities in accordance with Sections 403.813(1)(f) and (g), F.S., including the notification requirements of Section 403.813(1)(f), F.S. The Department's interpretation and implementation of these exemptions is explained in section 3.4.3.5 of the Applicant's Handbook Volume I.

(b) The restoration of less than 100 feet in length of existing insect control impoundment dikes and the connection of such impoundments to tidally influenced waters in accordance with Section 403.813(1)(p), F.S. The connection shall be of sufficient cross-sectional area to allow beneficial tidal influence. Restoration shall involve no more dredging than needed to restore the dike to original design specifications, and the final elevation of the dredge area shall be within two feet of immediately adjacent bottom elevations.

(c) Alteration and maintenance of treatment or disposal systems, as provided in Rule 62-340.700, F.A.C.

(d) Operation and routine custodial maintenance of activities legally in existence, provided the terms and conditions of the permit, exemption, or other authorization for such activities continue to be met, and provided the work is conducted in a manner that does not cause violations of water quality standards. However, this exemption shall not apply to any activity that is altered, modified, expanded, abandoned, or removed.

(e) Construction and maintenance of swales in accordance with Section 403.813(1)(j), F.S.

(8) Mosquito Control Activities, Surface Waters or Wetlands Created by – Construction, alteration, operation, maintenance, removal, and abandonment of surface water management systems, dams, impoundments, reservoirs, appurtenant works, or works in, on, or over lands that have become surface waters or wetlands solely because of mosquito control activities, in accordance with the provisions in Rule 62-340.750, F.A.C.

(9) Navigation, Aids to – The installation of aids to navigation, including bridge fender piles, “No Wake” and similar regulatory signs, and buoys associated with such aids, in accordance with Section 403.813(1)(k), F.S.

(10) Organic Detrital Material Removal in accordance with Sections 403.813(1)(r) and (u), F.S., including the notification provisions of Sections 403.813(1)(u)9. and 10., F.S.

(11) Piling Support Structures Associated With Water Testing or Monitoring Equipment by the Department or the NFWFMD – Installation of piling support structures associated with water testing or monitoring equipment by the Department or NFWFMD, provided that flow and navigation are not impeded.

(12) Pipes or Culverts, Repair or Replacement – The repair or replacement of existing functional pipes or culverts, the purpose of which is the discharge or conveyance of stormwater, in accordance with Section 403.813(1)(h), F.S. This exemption does not authorize the repair, replacement, or alteration of dam, spillways or appurtenant works, nor construction activities or procedures that cause violation of water quality standards as set forth in Chapter 62-302, F.A.C., and Rules 62-4.242, and 62-4.244, F.A.C.

(13) The construction, alteration, maintenance, removal or abandonment of recreational paths that:

(a) Are not located within wetlands or other surface waters;

(b) Include best management practices during construction to prevent secondary impacts in adjacent wetlands and other surface waters due to erosion and sedimentation;

(c) Have a width of eight feet or less for unidirectional paths, and 12 feet or less for bidirectional paths; and

(d) Do not allow motorized vehicles powered by internal combustion engines, except for maintenance and emergency vehicles.

(14) Seawall, Riprap, and Other Shore Stabilization – Construction, Restoration, Enhancement, and Repair.

(a) Construction of seawalls or riprap in artificially created waterways in accordance with Section 403.813(1)(i), F.S. An artificially created waterway is defined as a body of water that has been totally dredged or excavated and that does not overlap natural wetlands or other surface waters, including only that backfilling needed to level the land behind seawalls or riprap. For the purpose of this exemption, artificially created waterways shall also include existing residential canal systems.

(b) The restoration of a functional seawall or riprap in accordance with Section 403.813(1)(e), F.S., and the restoration of a seawall or rip rap that has been rendered non-functional by a discrete event, such as a storm, flood, accident, or fire. Such restoration shall be at or upland of its previous location, or within 18 inches waterward of its previous location, as measured from the face of the existing seawall slab to the face of the restored seawall slab, or from the front slope of the existing riprap to the front slope of the restored riprap. No filling can be performed except in the actual restoration of the seawall or riprap. This shall not be construed to authorize reclamation of land where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction and natural erosion. This exemption shall not affect the permitting requirements of Chapter 161, F.S.

(c) The construction of seawalls or riprap in wetlands or other surface waters, where such construction is between and adjoins at both ends existing seawalls or riprap, in accordance with Section 403.813(1)(o), F.S. In estuaries and lagoons, construction of vertical seawalls is limited to the circumstances and purposes stated in Sections 373.414(5)(b)1. through 4., F.S. This exemption shall not constitute an exception from the permitting requirements of Chapter 161, F.S.

(d) Installation of batter piles used exclusively to stabilize and repair seawalls and that do not impede navigation.

(e) The restoration of an eroding shoreline of 150 feet or less by planting with native wetland vegetation no more than 10 feet waterward of the approximate mean high water line (MHWL), in accordance with the following:

1. Plantings shall consist of native vegetative species such as salt meadow hay (*Spartina patens*), black needle rush (*Juncus roemarianus*), and smooth cordgrass (*Spartina alterniflora*), obtained from commercially-grown stock that is endemic to the geographic area of the Northwest Florida Water Management District.

2. Any invasive/exotic vegetative species that may occur along the shoreline, such as common reed (*Phragmites australis*), shall be removed in conjunction with the planting.

3. If wave attenuation is needed to protect and ensure survivability of the plantings, turbidity curtains shall be installed immediately waterward of and parallel to the planting area, but must be removed within three months after completion of vegetation planting.

4. No filling by anything other than vegetative planting is authorized, except that if permanent wave attenuation is required to maintain shoreline vegetation, an oyster reef “breakwater” is authorized to be established concurrent with the planting, provided that:

a. The outer edge of the “breakwater” shall extend no more than 10 feet waterward of the approximate MHWL.

b. The “breakwater” shall be composed predominantly of natural oyster shell cultch such as clean oyster shell and fossilized oyster shell, although unconsolidated boulders, rocks, and clean concrete rubble can be associated with the oyster material. Oyster shell may be packaged in biodegradable bags (i.e. coir fiber) prior to placement in the water.

c. The “breakwater” shall not be placed over, or within 3 feet (in any direction) of any submerged grassbed or existing emergent marsh vegetation.

d. The “breakwater” shall be placed in units so that there is a minimum of three feet of tidal channel within every 20 feet of structure, so as to not substantially impede the flow of water, and shall not create a navigational hazard.

e. All equipment used during construction shall be operated from, and be stored in uplands.

(15) Single-Family Residences and Associated Residential Improvements.

(a) The construction or private use of a single-family dwelling unit, duplex, triplex, or quadruplex that is not part of a larger common plan of development or sale proposed by the applicant and does not involve wetlands and other surface waters in accordance with Section 373.4145(3)(c), F.S.;

(b) Stormwater management systems designed to serve single-family residential projects conducted in conformance with Section 403.813(1)(q), F.S.

(16) Utilities.

(a) The installation of overhead transmission lines in accordance with Section 403.813(1)(a), F.S.

(b) The installation of subaqueous transmission and distribution lines in accordance with Section 403.813(1)(m), F.S.

(c) The replacement or repair of subaqueous transmission and distribution lines in accordance with Section 403.813(1)(n), F.S.

(d) Activities necessary to preserve, restore, repair, remove, or replace an existing communication or power pole or line, provided that the work does not involve dredge and fill activities other than the removal of the existing structure and the installation of the new structure, and, in the case of a power pole or line, the activity does not increase the voltage of existing power lines. An activity does not qualify to use this exemption if it results in relocation of an existing structure or facility more than 10 feet in any direction from its original location, or if it involves construction of new power or telephone lines or the repair and replacement of existing structures that require dredge and fill activities in order to provide access to the site.

(e) The installation, removal, and replacement of utility poles that support telephone or communication cable lines, or electric distribution lines of 35kV or less, together with the bases and anchoring devices to support those poles, as specified below. For the purpose of this exemption, “anchoring device” shall mean steel guy wires fastened to the ground, without the need for dredging, and “base” shall mean a concrete or steel foundation not exceeding four feet in radius, used to support a utility pole. This exemption shall be subject to the following conditions:

1. No more than 15 utility poles may be installed, removed, or replaced in wetlands;

2. This exemption shall not apply in surface waters other than wetlands;

3. The temporary disturbance to wetlands shall be limited to a length of 0.5 mile, an areal extent of 0.5 acre, and a width of 30 feet to access the site to actually install, remove, or replace the utility poles; thereafter, maintenance of the utility right-of-way in wetlands shall be limited to a cleared corridor that does not exceed a total width of 15 feet and a total area of 0.25 acre;

4. This exemption shall not apply in forested wetlands located within 550 feet from the mean or ordinary high water line of an Aquatic Preserve or a named waterbody that is designated as an Outstanding Florida Water or an Outstanding National Resource Water;

5. There shall be no permanent placement of fill other than utility poles and anchoring devices;

6. There shall be no dredging or filling to create fill pads or access roads, except for temporary mats, which may be used to access pole installation sites, and all temporary mats shall be removed within 30 days after the installation, removal or replacement of the utility poles, associated bases, and anchoring devices;

7. The installation of the utility poles and associated bases and anchoring devices shall not interfere with navigation or impede water flow in wetlands;

8. Turbidity, sedimentation, and erosion shall be controlled during and after construction to prevent violations of state water quality standards due to construction related activities;

9. Except for the permitted structures, pre-construction ground elevations and the contours of all soils that are disturbed by construction activities, including vehicle ruts in wetlands, shall be restored within 30 days of completion of the installation of the utility line or cable, and restored grades shall be stabilized within 72 hours following completion of elevation and contour restoration to minimize erosion;

10. Vehicle usage in wetlands shall be conducted so as to minimize tire rutting and erosion impacts;
11. Water jets shall not be used except for those that are a pre-engineered part of the pole, and provided that the water for the jets is either recirculated on site or is discharged in a self-contained upland disposal site;
12. Vehicular access in wetlands shall be limited to existing roads, trails, rights-of-way or easements, and to other previously disturbed corridors where they exist; and
13. Persons using this exemption shall provide an annual report to the Department that summarizes the activities conducted under this exemption for the period from January 1 to December 31 of each year, including: the acreage of temporary impacts in wetlands resulting from the use of temporary mats and the clearing of wetland vegetation; the extent of permanent impacts to wetlands, including the number of poles and structures in wetlands and the acreage of clearing in wetlands; the voltage of all electric lines that are installed; the number of times this exemption is used; the specific location of each line that is installed (including the county, the section, township, and range, and the identity of permanent landmarks such as roads and named wetlands and other surface waters within or adjacent to the work location), and the number of times and locations where water jets are used. This report shall be due on March 1 of each year.

(f) Construction, alteration, maintenance, removal, or abandonment of communication tower sites with one-half acre or less of impervious or semi-impervious surface such as access roads, buildings, and equipment pads. The design of above-grade access roads shall not adversely affect the conveyance of surface water flows. No activities associated with the tower site, including access to the site, shall be located in wetlands or other surface waters or within a 100-year floodplain.

(g) Construction, alteration, maintenance, removal, or abandonment of electrical distribution substation sites with one acre or less of impervious or semi-impervious surface such as access roads, buildings, and equipment pads. The design of above-grade access roads shall not adversely affect the conveyance of surface water flows. The site must be surrounded by swales, as defined in Section 403.803(14), F.S., or other type of equivalent treatment, and must not have a direct discharge to an Outstanding Florida Water. No activities associated with the substation, including access to the site, may be located in wetlands or other surface waters, or within a 100-year floodplain.

(h) Temporary trenches dug by hand or with equipment that create a trench less than two feet wide to install utilities such as communication cables, water lines, and electrical lines, provided such activities:

1. Are not located within wetlands or other surface waters;
2. Do not impede or divert the flow of surface waters;
3. Are backfilled within 24 hours of disturbance to restore all grades and contours that existed prior to construction and installation;
4. Utilize and maintain erosion and soil stabilization controls in accordance with Part IV of Applicant's Handbook Volume I; and
5. Do not result in violations of water quality standards.

(17) Alteration of a wholly owned, artificial surface water created entirely from uplands that does not connect to wetlands or other surface waters, except for those created for the purpose of providing mitigation under Part IV of Chapter 373, F.S., and except where permitted under Chapter 62-25, F.A.C., or this chapter.

(18) Modification or reconstruction by a city, county, state agency, or water management district, of an existing conveyance system that has not been previously permitted, provided that it is not intended to serve new development, does not have a direct discharge to an Outstanding Florida Water, will not increase pollution loading or change points of discharge in a manner that would adversely affect the designated uses of wetlands or other surface waters, or will not result in new adverse water quantity impacts to receiving waters and adjacent lands. This exemption shall not apply to activities that:

- (a) Propose to pipe and fill wetlands and other surface waters, including irrigation or drainage ditches;
- (b) Propose to replace a functional treatment swale that was authorized under Chapter 62-25 or 62-346, F.A.C., or
- (c) Propose construction exceeding the thresholds and criteria of paragraph 62-346.050(1)(b), F.A.C.