



# State 404 Program Rule Adoption Hearing

**April 2, 2020**

**April 6, 2020**

**April 10, 2020**





# Comment Period

**Comments will be accepted until  
midnight, April 17, 2020**



# Submitting Comments

- **Submit comments during this webinar by:**
  - **Speaking:** raise hand in webinar pane
  - **Typing:** type into webinar chat box
- **By email:** [Heather.Mason@FloridaDEP.gov](mailto:Heather.Mason@FloridaDEP.gov)
- **By mail:** FDEP, Attn: Heather Mason, 2600 Blair Stone Rd, MS 2500 Tallahassee, FL 32399



# 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**



# 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?

- **State 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**



# Public Input

## *Public Input is Important*

- **Public input has been a vital part of our rulemaking process and will continue to be a vital part of the assumption process as a whole. Public input points include:**
  - **Rulemaking workshops (held in 2018)**
  - **Public comment periods (present)**
  - **This public hearing (present)**
  - **During EPA review of program (future)**



# Steps to Assumption

## *Step 1: Rulemaking*

- **We are here.**
- **Rulemaking is only the first step.**
- **Completion of rulemaking does not grant DEP assumption.**
- **Rules are only one part of DEP's assumption application package to EPA.**
- **The finalized rules will be 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

## *Step 2: Assumption package*

- **Assumption Package will contain:**
  - **Memoranda of Agreement**
    - EPA, Corps, others if applicable
  - **Program description**
  - **Finalized rules/statutes**
  - **Biological Assessment**
- **EPA will publish assumption package for public review and comment and will consult with the Tribes**



# Steps to Assumption

## *Step 3: EPA Review/Action*

- **EPA will review package & public comments**
- **Before DEP can begin administering the State 404 Program, we will be required to demonstrate to EPA that our state-administered 404 program would be as stringent, if not more stringent than, the federal government's.**
- **Once complete, EPA has 120 days to make decision**



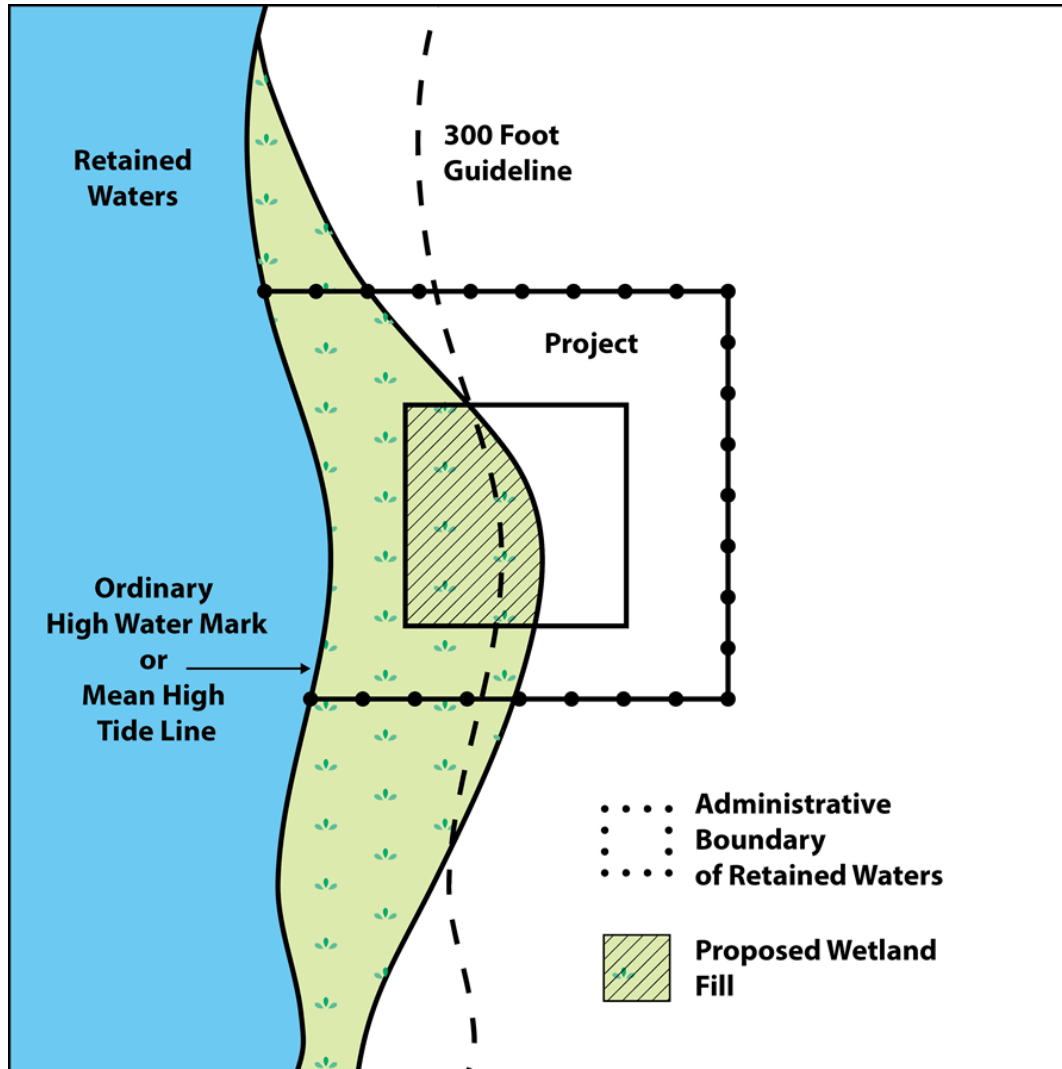
# Jurisdiction

## *State 404 Program*

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

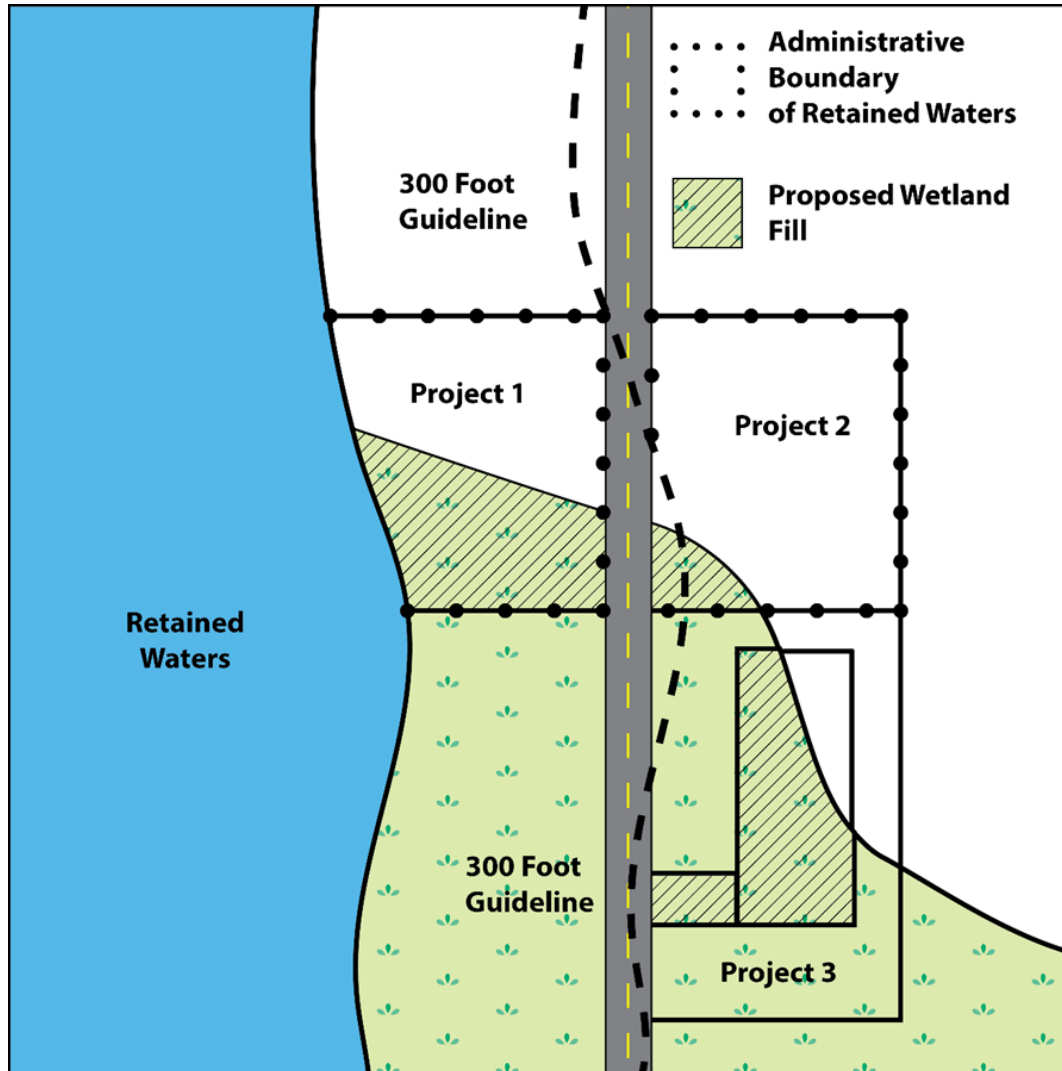


# Example 1





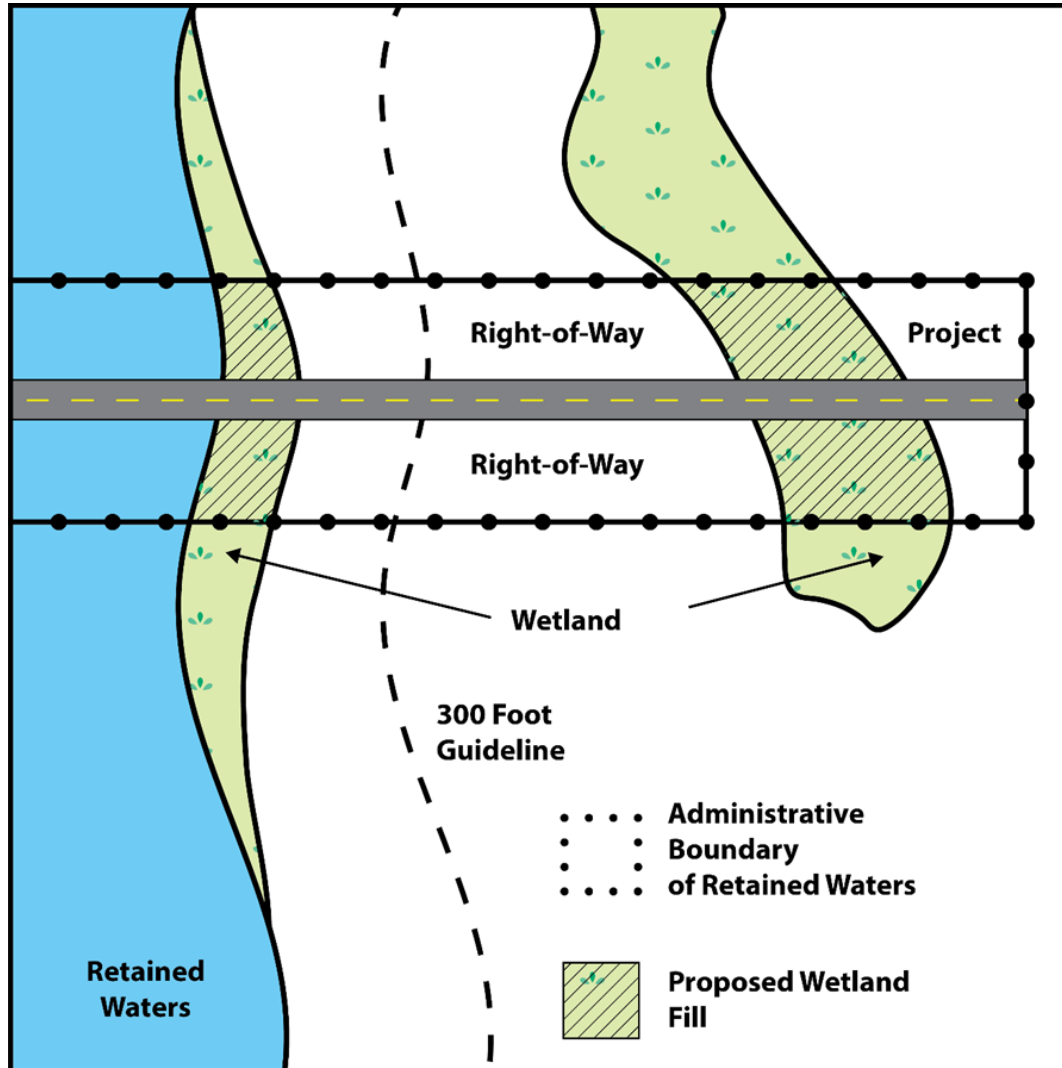
# Example 2







# 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.

## *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.

## *Contents*

- **General permits**
  - Modeled after existing Corps 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 may be viewed at:

<https://floridadep.gov/water/water/content/water-resource-management-rules-development#erp>



# Comments/Questions

***Commenting Ends April 17, 2020***

- **During this webinar by:**
  - Typing into chat box
  - Raise hand in webinar pane to be unmuted and speak
- **By email to: [Heather.Mason@FloridaDEP.gov](mailto:Heather.Mason@FloridaDEP.gov)**
- **By regular mail to:**

**FDEP**  
**Attn: Heather Mason**  
**2600 Blair Stone Rd, MS 2500**  
**Tallahassee, FL 32399**