



State 404 Program: Exemptions

November 3, 2020



Acronyms

- **CFR – Code of Federal Regulations**
- **CWA – Clean Water Act**
- **F.A.C. – Florida Administrative Code**
- **F.S. – Florida Statutes**
- **WOTUS – Waters of the United States**



Rules

***Section 62-331.040, Florida
Administrative Code***

***Section 3.1, State 404 Program
Applicant's Handbook***



State 404 Regulation

- **Section 62-331.020, F.A.C. Regulated Activities**
 - *(1) A permit under this Chapter is not required for the activities described in 40 CFR § 232.3 ... and in Appendix B of the 404 Handbook, subject to the limitations described therein.*
- **Fees**
 - *There shall be no additional fee charged for verifications, notices, applications, or permits under this Chapter. (Rule 62-331.120, F.A.C.)*
- **Instructions**
 - 404 Handbook Section 3.1; Appendix B
- **Forms:**
 - **Verification of Exemption, Form 62-330.050(1)**
 - **Notice of Intent to Use a General Permit, Form 62-330.402(1)**
 - **Application for Individual Permit, Form 62-330.060(1)**



Exemptions

Procedures for Processing State 404 Program Exemptions



40 CFR § 232.3

Definitions

- **Discharge of dredge material**

The term “discharge of dredged material” means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, WOTUS



40 CFR § 232.3 – 2

Definitions

- **Incidental fallback**

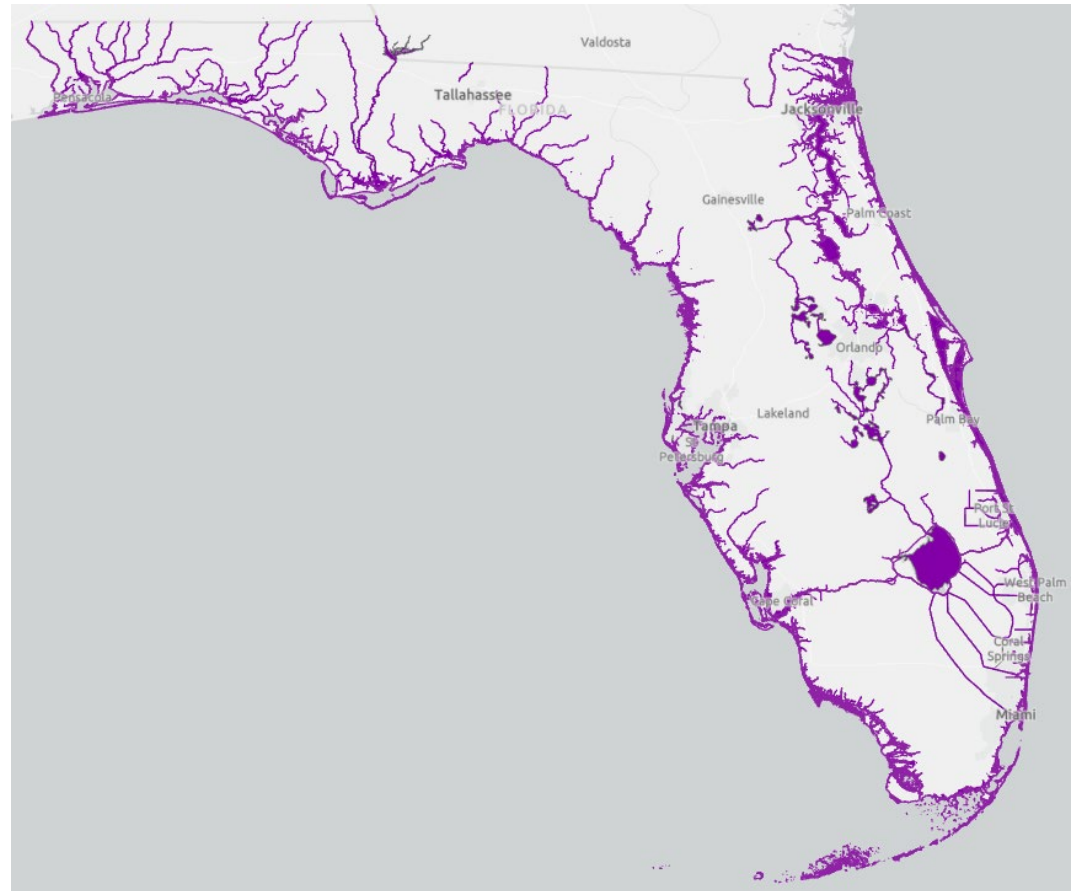
Any incidental addition, including redeposit, of dredged material associated with any activity that does not have or would not have the effect of destroying or degrading an area of WOTUS



40 CFR § 232.3 – 3

Definitions

- **Retained WOTUS**
- **State assumed waters**





40 CFR § 232.3 – 4

Definitions

- **Not Included**

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

- **Discharges subject to section 402 of the CWA**
- **Incidental fallback**
- **Certain discharges, such as those associated with normal farming, silviculture, and ranching activities**



The Kickouts

40 CFR § 232.3(a)

- Toxic pollutants
- Section 307 CWA
 - Appendix D, 404 Handbook
- Requires a permit



The Kickouts – 2

40 CFR § 232.3(b)

- **New Use**
 - **Flow or circulation impaired**
 - **Reach of waters reduced**
- **Any discharge of dredged or fill material incidental to any of the exempt activities must have a permit if the purpose of the activity is to convert an area of the WOTUS into a use to which it was not previously subject**
- **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**



The Kickouts – 3

40 CFR § 232.3(b)

- **New Use**
 - **A conversion of section 404 wetland to a non-wetland is a change in use of an area of WOTUS and a permit is required**
 - **Water Management District (WMD) coordination**
 - **40 CFR § 232.3(c)(1)**



The Kickouts – 4

40 CFR § 232.3(b)

- **New Use**
 - **Flow or circulation impaired**
- **A discharge which elevates the bottom of WOTUS without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, WOTUS**



The Kickouts – 5

40 CFR § 232.3(b)

- **New Use**
 - Reach of waters reduced
- **An activity associated with a discharge of dredged material destroys an area of WOTUS if it alters the area in such a way that it would no longer be a WOTUS**
 - e.g., filling a water to convert it to upland, or any alteration that results in no WOTUS



The Kickouts – 6

40 CFR § 232.3(b)

- **New Use**
 - **Biological Integrity**
- **An activity associated with a discharge of dredged material degrades an area of WOTUS 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**



The Kickouts – 7

40 CFR § 232.3(a)-(b)

- **Example**
 - **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 WOTUS in conjunction with construction of dikes, drainage ditches or other works or structures used to affect such conversion**



Exempt Activities

Appendix B: 40 CFR § 232.3(c)

- **(1) Normal farming, silviculture, and ranching activities**
- **(2) Maintenance of currently serviceable structures (dikes, dams, levees, riprap, etc.)**
- **(3) Construction and maintenance of farm or stock ponds or irrigation ditches or maintenance of drainage ditches**
- **(4) Construction of temporary sedimentation basins on a construction site**
- **(5) State approved 208(b)(4) programs/best management practices (BMPs)**
- **(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment**
- **Federal construction projects specifically authorized by the U.S. Congress that qualify under 404(r) [40 CFR § 232.3(e)]**



Verification

- **Requirements**
 - **A permit is not required for activities listed in Appendix B**
 - **Activities that qualify for a State 404 exemption and an environmental resource permitting (ERP) exemption that does not require prior notice to the agency may be conducted without notice**
 - **Notice is not required to conduct an exempt activity, except where the activity also requires an ERP authorization**
 - **Section 4.2.1, ERP Applicants Handbook I**



Example

Repair and Replacement of Riprap

- **Appendix B: 40 CFR § 232.3(c)(2)**
- **Section 62-330.051(12)(b), F.A.C.**

Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.

Maintenance does not include any modification that changes the character, scope, or size of the original fill design

The restoration of a seawall or riprap under section 403.813(1)(e), F.S., where:

1. The seawall or riprap has been damaged or destroyed within the last year by a discrete event, such as a storm, flood, accident, or fire.

Restoration shall be no more than 18 inches waterward of its previous location



Example – 2

Main. of Transportation Structures

- **Appendix B: 40 CFR § 232.3(c)(2)**
- **Section 62-330.051(4)(e), F.A.C.**

Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.

Maintenance does not include any modification that changes the character, scope, or size of the original fill design

Repair, stabilization, paving, or repaving of existing roads, and the repair or replacement of vehicular bridges that are part of the road.

... 7. Notice of intent to use this exemption is provided to the Agency 30 days before performing any work.

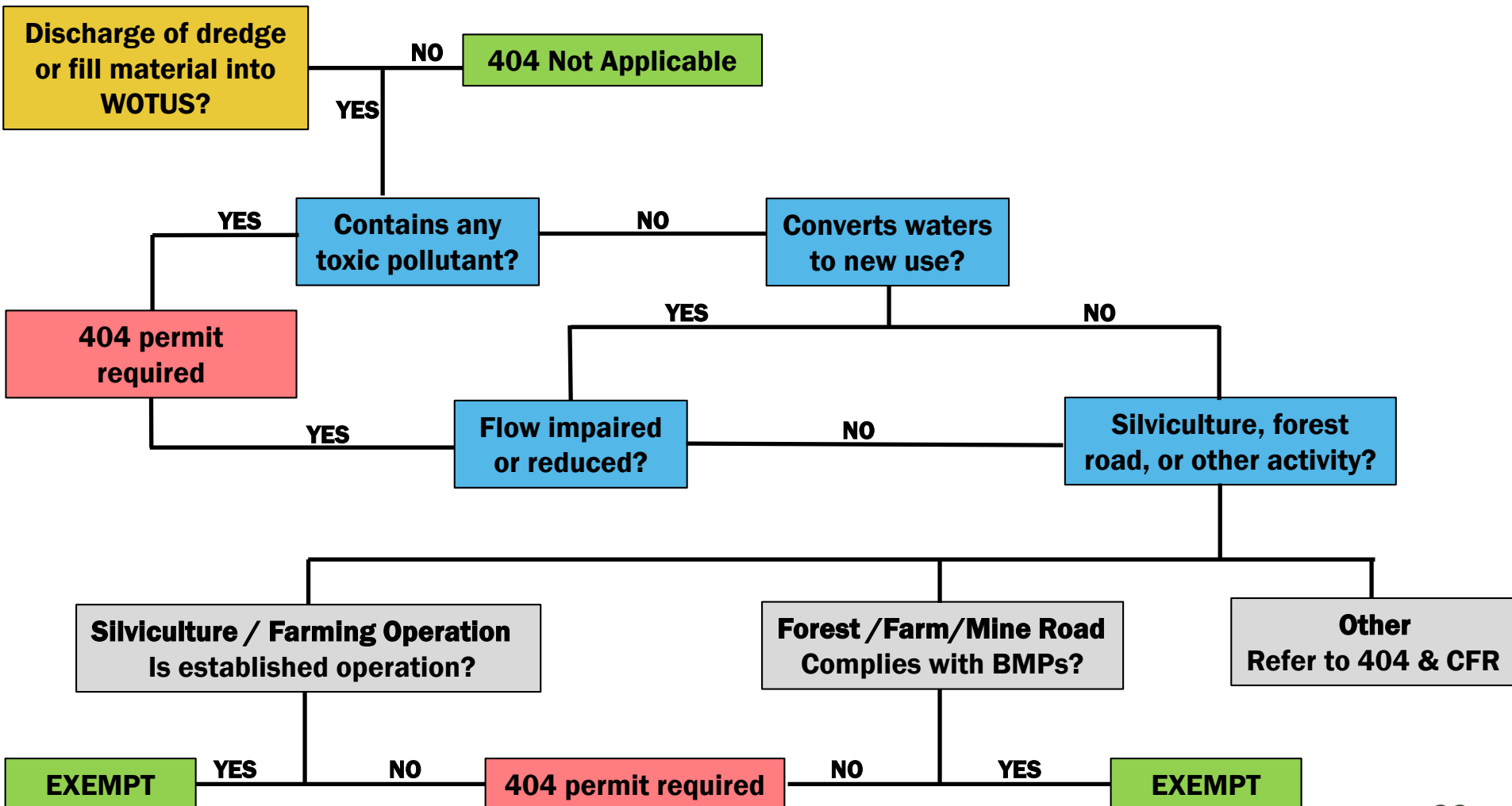


Procedure

Review Procedures



Flow Chart





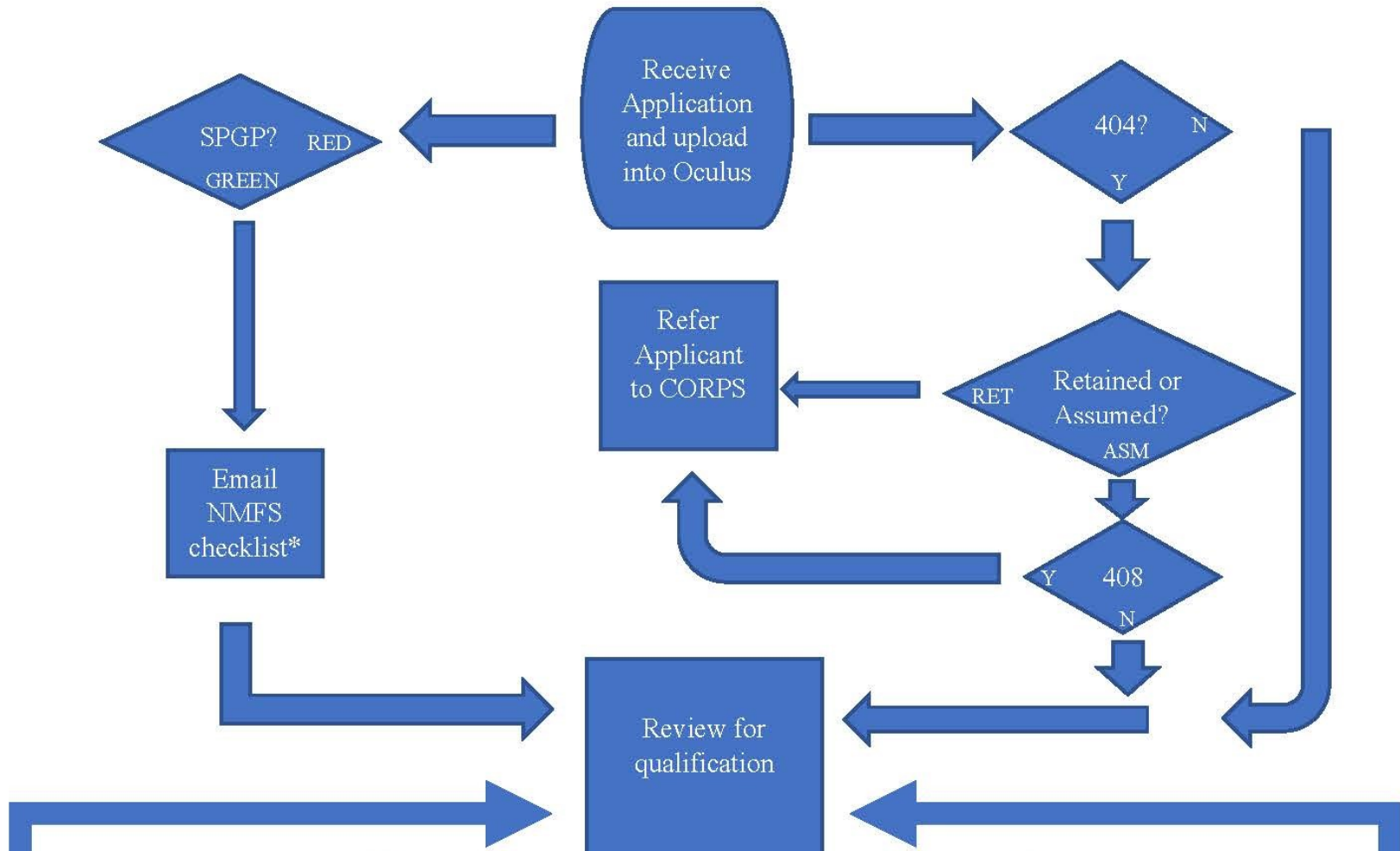
Sequence of Review

Verification of Exemption

- **Verification required?**
 - Is the project an exempt activity listed in Appendix B of the 404 Handbook?
 - Does the activity require an ERP authorization?
- **Verification of Exemption:**
 - Is project within assumed waters?
 - Within 30 days:
 - Does the activity meet the conditions for exemptions?
- **Documentation:**
 - Checklist
 - Verification (letter)

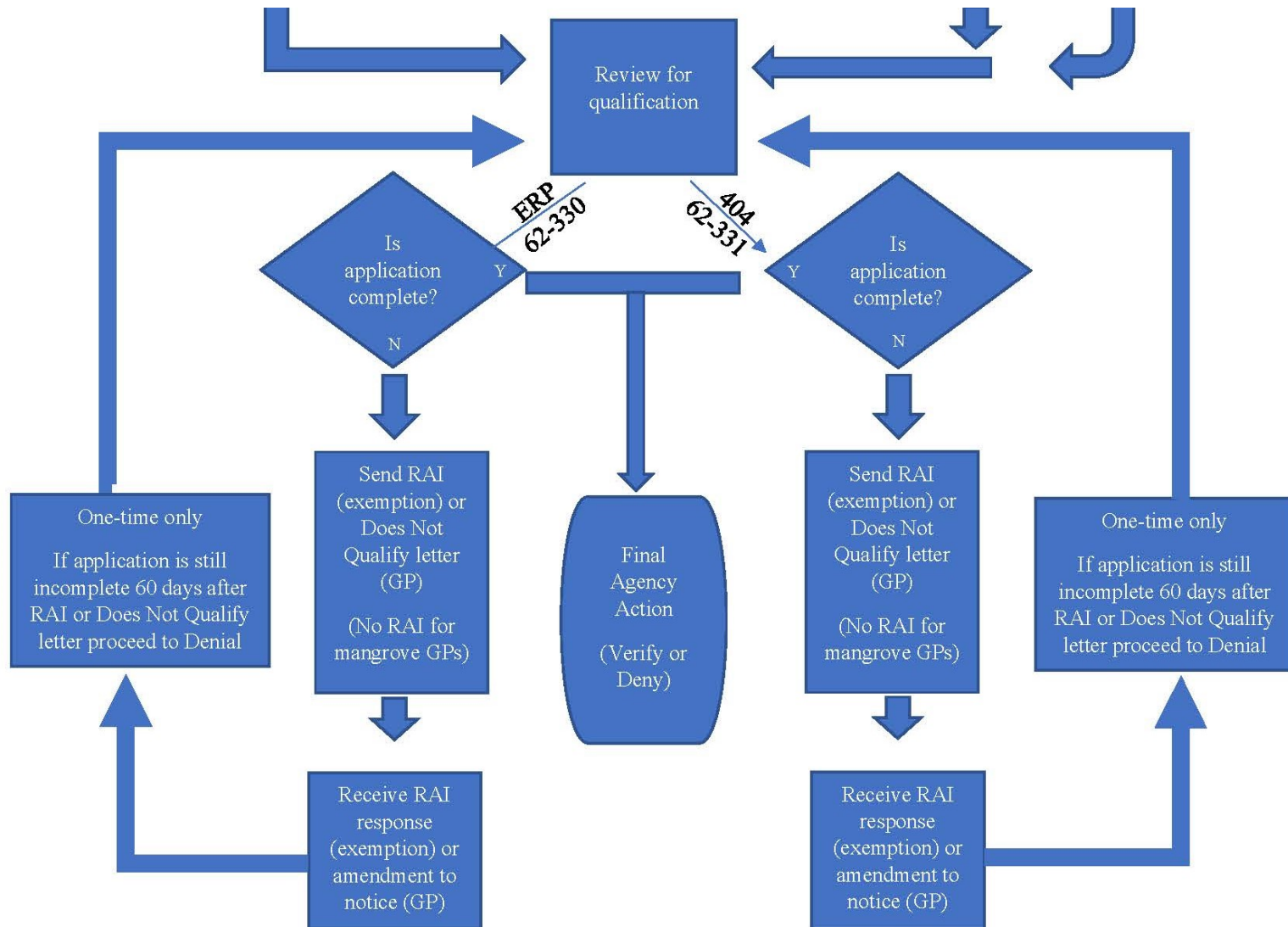


Flow Chart





Flow Chart – 2





Checklist

General Project Information

Section X: Project Information					
Tax Parcel ID#					
Property Ownership Verified?			☐ Yes		
Section		Township		Range	
Latitude			Longitude		
Waterbody Name			Water Body Class		
Florida Water Management District Cumulative Impact Basin:					
Does project require the discharge of dredge or fill material into waters of the United States?			☐ Yes		
Is project located in retained waters?			☐ Yes, refer applicant to the Corps within 5 days ☐ No		
Is the project likely to affect a Corps Civil Works project (require Sec 408 authorization)?			☐ No ☐ Yes, refer applicant to the Corps within 5 days and add Special Condition XX		
Will discharges contain any toxic pollutants?			☐ No		
Is this an emergency permit?			☐ No ☐ Yes, contact Corps ASAP		
Type of authorization requested?			☐ Exemption, complete section X ☐ General Permit, complete section X ☐ Individual Permit, complete section X		



Example 1

***State 404 Exemption
with
ERP General Permit***



Example 1

Maintenance of Structures

State 404 Program

- **Appendix B: 40 CFR § 232.3(c)(2)**

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

ERP

- **Rule 62-330.443, F.A.C.**

General Permit to the Florida Department of Transportation, Counties, and Municipalities for Minor Bridge Alteration, Placement, Replacement, Removal, Maintenance, and Operation



Forms

Section 4.3, 404 Handbook

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.



Example 1 – 2

Sequence of Review

- **Does the ERP activity qualify for a 404 Exemption or 404 General Permit?**
 - **YES, maintenance of structures may be exempt.**
- **Verification required?**
 - **Is the project an exempt activity listed in Appendix B?**
 - **YES, maintenance of structures may be exempt.**
 - **Does the activity require an ERP authorization?**
 - **YES, requires ERP general permit.**



Example 1 – 3

Sequence of Review

- **Verification of Exemption:**
 - **Is project within assumed waters?**
 - **YES, the project is within state assumed waters.**
 - **30 days:**
 - **Does the activity meet the conditions for exemptions?**
 - ☐ **Activity will not convert an area into a new use.**
 - ☐ **Activity will not impair flow/circulation or reduce reach.**
 - ☐ **Activity will not change the character, scope or fill size of the original design.**



Example 1 – 4

Documentation

- **Checklist**
- **Verification (letter)**
 - **Separate document from ERP general permit**
 - **May be issued concurrently**



Example 2

***State 404 Exemption
with
ERP Silviculture Exemption***



Example 2

Silviculture Roads

State 404 Program

- **Appendix B: 40 CFR § 232.3(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).

ERP

- **Section 62-330.0511(1)(a), F.A.C.**

Any person constructing, operating, maintaining (including repairing or replacing), altering, abandoning, or removing silvicultural roads, and other minor activities designed to place the property into silvicultural use or to perpetuate the maintenance of the property in silvicultural use...



Example 2 – 1

Silviculture Roads, continued

State 404 Program

- **Appendix B: 40 CFR § 232.3(b)**
 - Must not convert WOTUS to new use
 - Must not impair flow, circulation, or reach of such waters
- **Appendix B: 40 CFR § 232.3(c)(6)**
 - Requires BMPs
- **Section 5.2.1, WMD/Handbook**

ERP

- **Section 62-330.0511(4)(a), F.A.C.**
 - Activities must not convert wetlands or other surface waters to uplands
- **Section 62-330.0511(4)(b)-(f), F.A.C.**
 - Limits impairment of flow, circulation, and reach
- **Section 62-330.0511(4)(h), F.A.C.**
 - Requires BMPs



Example 2 – 2

Sequence of Review

- Does the ERP activity qualify for a 404 Exemption or 404 General Permit?
 - YES, silviculture roads may be exempt.
- Verification required?
 - Is the project an exempt activity listed in Appendix B?
 - YES, silviculture roads may be exempt.
 - Does the activity require an ERP authorization?
 - YES, the activity requires a no-fee noticed exemption under Rule 62-330.0511, F.A.C.



Example 2 – 3

Sequence of Review

- **Verification of Exemption:**
 - **Is project within assumed waters?**
 - **YES, the project is within state assumed waters.**
 - **30 days:**
 - **Does the activity meet the conditions for exemptions?**
 - ☐ **Activity will not convert an area into a new use.**
 - ☐ **Activity will not impair flow/circulation or reduce reach.**
 - ☐ **Activity will not change the character, scope or fill size of the original design.**



Example 2 – 4

Documentation

- **Checklist**
- **Verification (letter)**
 - **Separate document from ERP Verification of Exemption**
 - **May be issued concurrently**



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