

Wetlands Regulatory Report

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What Is an ERP (Environmental Resource Permit)?

Understanding How the Law Protects Agricultural Landowners

What Is an ERP?

The Environmental Resource Permit (ERP) program is a statewide regulatory system that governs activities affecting:

- Wetlands
- Surface waters (like canals, ditches, or ponds)
- Drainage systems and flood control

The goal is to ensure that construction or land-use changes don't cause major harm to the environment, such as flooding, water pollution, or destruction of wetlands.

Who Runs the ERP Program?

The ERP system is managed by:

- The Florida Department of Environmental Protection (FDEP)
- The South Florida Water Management District (SFWMD)
- Other regional water management districts across Florida

These agencies are the only ones legally allowed to issue or enforce ERPs unless they officially delegate that authority to a local government (like Miami-Dade County).

What Laws Govern the ERP Program?

The program is based on:

- Part IV of Chapter 373, Florida Statutes (F.S.) – Core state law
 - Rule 62-330, Florida Administrative Code (F.A.C.) – ERP procedures and requirements
 - Rule 62-340, F.A.C. – Wetland identification procedures (“delineation”)
 - Rule 62-344, F.A.C. – Sets criteria for delegating ERP authority to local governments like DERM
-

Agricultural Exemptions: The “10-Acre Rule”

If You’re a Farmer, You May Be Exempt

Florida law recognizes that bona fide (good-faith) agricultural operations should not be burdened by unnecessary red tape.

According to the ERP Applicant’s Handbook Volume I (2024 Edition, Agricultural Exemptions Section):

No ERP is required if ALL of the following are true:

1. The land is part of an ongoing, legitimate agricultural operation
2. The activity affects 10 acres or less of wetlands or surface waters
3. The activity does not harm water quality or disrupt natural water flow
4. The land is classified as agricultural by the Property Appraiser under §193.461, F.S.

Note: The 10-acre limit refers to the area of wetlands or surface waters affected, not the total size of the property. Larger farms may still qualify if the affected area is within the limit.

What Laws Protect This Exemption?

The ERP exemption for agriculture is backed by:

- Florida Right to Farm Act – §823.14, F.S.
 - Florida Agricultural Lands and Practices Act – §163.3162, F.S.
 - House Bill 909 (2022) – Prohibits counties from overriding state protections for agriculture
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Where Does DERM Fit In?

DERM’s Limitations

Miami-Dade County’s Division of Environmental Resources Management (DERM) is responsible for local environmental enforcement. However, DERM cannot enforce ERP regulations unless it has been formally delegated that power by:

- The FDEP, or
- The SFWMD

This requirement is established in:

- §373.441, F.S. – Local governments must obtain state permission to regulate ERP
- Rule 62-344, F.A.C. – Establishes the process for delegation

Note: Acreage references (including “10 acres or less”) are illustrative only and do not independently determine ERP exemption.

ERP exemptions for agricultural activities are governed by Florida Statute § 373.406 and depend on the nature and impacts of the activity, not acreage alone.

Evidence of No Delegation

In December 1995, the Florida Department of Environmental Protection (FDEP), the Board of Trustees of the Internal Improvement Trust Fund, and Metropolitan Dade County signed Memorandum of Agreement MA-13-114, which delegated to DERM limited proprietary authorization for minor projects on sovereign submerged lands (such as docks, ramps, and seawall repairs).

However, this agreement does not grant ERP delegation under Rule 62-344, F.A.C. or §373.441, F.S.

It is strictly limited to proprietary activities and does not include ERP enforcement, wetland regulation, or agricultural oversight.

Under Rule 62-344.100(2), F.A.C., the Florida DEP must maintain a public list of all delegated ERP programs. Miami-Dade County is not listed as having received this delegation.

Summary for Farmers in Las Palmas

If you:

- Own farmland officially classified as agricultural by the Miami-Dade Property Appraiser
- Are engaged in legitimate agricultural operations
- Are working on 10 acres or less of wetland or surface waters
- Are not polluting water or causing major changes to water flow

Then:

You may be exempt from ERP permitting under Florida law
DERM Cannot Legally Enforce ERP Rules on You

Suggested Statement for Disputes

“Under the ERP Applicant’s Handbook and §193.461, F.S., this land is exempt from ERP permitting. DERM has not received delegation under §373.441, F.S. or Rule 62-344, F.A.C., and therefore lacks authority to enforce ERP regulations on this bona fide agricultural operation.”

Disclaimer: This informational report is based on Florida statutes and official DEP publications. It is intended for use in defending agricultural rights and should be supplemented by legal counsel if DERM proceeds with enforcement.

This is not legal advice. Consult an attorney for guidance.

MEMORANDUM OF AGREEMENT

Among
Board of Trustees of the Internal Improvement Trust Fund,
Department of Environmental Protection
and
Metropolitan Dade County

Agreement No. MA-13-114

Article I

Whereas, both the Board of Trustees of the Internal Improvement Trust Fund (BOT), through the Department of Environmental Protection (DEP), and Metropolitan Dade County, through its Department of Environmental Resources Management (DERM), have jurisdiction over dredge and fill activities occurring within the boundaries of Dade County; and

Whereas, the jurisdiction of the Board of Trustees, through the DEP, is proprietary in nature, and the jurisdiction of Metropolitan Dade County, through DERM, is regulatory in nature; and

Whereas, implementation of these different jurisdictions has resulted in regulatory and proprietary programs that are to a significant degree overlapping; and

Whereas, the parties acknowledge that certain types of dredge and fill activities can be adequately reviewed by a single party; and

Whereas, the parties are striving to reduce the degree of overlap in their programs, thereby providing more efficient service to the public and allowing each party to focus limited staff and funding on other more pressing issues.

NOW, THEREFORE, the parties make this Memorandum of Agreement (MOA) in accordance with the purposes outlined above, and hereby agree as follows:

Article II

A. The Board of Trustees hereby:

1. Delegates to Metropolitan Dade County the authority to act as agent of the BOT to review, authorize, or deny those project types listed in Attachment A of this MOA, except for projects for which Metropolitan Dade County is the applicant or that are located contiguous to unbridged, undeveloped coastal islands as defined by sections 18-21.003(12), (13), (52), (53), and 18-21.004(1)(h), F.A.C.

B. The Department of Environmental Protection, through its Bureau of Submerged Lands and Environmental Resources (BSLER), agrees to do as follows:

1. Provide DERM with updates to the Operations and Procedures Manual as they are issued.

2. Include DERM in all applicable BSLER training programs.
 3. Provide policy and rule guidance to DERM staff as necessary to ensure consistency with BOT and DEP policy and procedures.
 4. Assume the lead role in modifying this MOA as necessary.
- C. Metropolitan Dade County, through its Department of Environmental Resources Management (DERM), agrees to do as follows:
1. Apply chapters 18-18, 18-20, and 18-21, F.A.C., to all project types listed in Attachment A of this MOA.
 2. Apply the BSLER Operations and Procedures Manual to all aspects of application processing associated with those project types listed in Attachment A of this MOA.
 3. Participate in BSLER training sponsored by DEP as determined necessary by DEP.
 4. Forward the original files for those project types listed in Attachment A of this MOA to the DEP's Division of State Lands' public records center within 30 days of agency action.
 5. Provide to BSLER an annual report in accordance with the report matrix of Attachment B of this MOA. Failure to comply with these reporting requirements may result in termination of the agreement.

Article III

- A. The delegations set forth in Attachment A of this MOA are not applicable to a specific application for a request to use sovereign submerged lands under chapters 18-18, 18-20, or 18-21, F.A.C., where one or more members of the BOT, or DEP or DERM staff, determines that such application is reasonably expected to result in a heightened public concern, because of its potential effect on the environment, natural resources, or controversial nature or location.
- B. Should disagreements arise regarding requests to use sovereign, submerged land or should interpretation of rules be necessary, such disagreements or interpretation shall be resolved by the DEP Bureau of Submerged Lands and Environmental Resources.
- C. This agreement shall become effective upon execution by the parties and upon DERM staff completing proprietary program training provided by the DEP within 90 days of execution.

Article IV

- A. This agreement may be modified by mutual consent of the parties.
- B. This agreement may be terminated by any party by providing a 30-day written notice to another party by certified U.S. mail at the following addresses:

- B. This agreement may be terminated by any party by providing a 30-day written notice to another party by certified U.S. mail at the following addresses:

Dade
County/
DERM:

Metropolitan Dade County
Department of Environmental Resources Management
33 S.W. 2nd Avenue
Miami, FL 33130-1540

BOT:

The Board of Trustees of the Internal Improvement Trust Fund
The Capitol
Tallahassee, FL 32399

DEP:

Department of Environmental Protection
Bureau of Submerged Lands and Environmental Resources
2600 Blair Stone Road, MS 2505
Tallahassee, FL 32399-2400

Article W

- A. The Chief of BSLER is hereby designated as the official representative of the BOT and DEP on matters relating to this agreement.
- B. The Director of Dade County's Department of Environmental Resources Management is hereby designated as the official representative of Metropolitan Dade County on matters relating to this agreement.

In Witness Whereof, this Memorandum of Agreement has been executed by the undersigned duly authorized parties on May 11, 1996.

METROPOLITAN DADE COUNTY

DEPARTMENT OF ENVIRONMENTAL
PROTECTION, BOARD OF TRUSTEES
OF THE INTERNAL IMPROVEMENT

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ATTACHMENT A

The MOA Applies to the Following Project Types Located in Dade County and Not Contiguous to an Unbridged, Undeveloped Coastal Island

1. Installation and repair of private residential single-family docks that meet the requirements of Section 403.813(2)(b), F.S. A private residential single-family dock means a dock associated with a detached residence.
2. Installation and repair of private residential single-family boat ramps that meet the requirements of Section 403.813(2)(c), F.S. A private residential single-family boat ramp means a ramp associated with a detached residence.
3. Repair or replacement of existing docks that meet the requirements of Section 403.813(2)(d), F.S.
4. Repair or replacement of existing seawalls, revetments, or bulkheads that meet the requirements of Section 403.813(2)(e), F.S.
5. Maintenance dredging projects that meet the requirements of Section 403.813(2)(f), F.S., where the dredged material will be used for public purposes on public land or has no economic value as determined by Section 18-21.011(3)(c), F.A.C.
6. Repair or replacement of existing functional pipes or culverts, the purpose of which is the discharge of stormwater, that meet the requirements of Section 403.813(2)(h), F.S.
7. Installation of aids to navigation and associated buoys that meet the requirements of Section 403.813(2)(k), F.S.

ATTACHMENT B

ANNUAL REPORT

to the Department of Environmental Protection

Submitted by:

Metropolitan Dade County
Department of Environmental Resources
Management
Susan Markley, Chief
Natural Resources Division

ATTACHMENT B

ANNUAL REPORT

Metropolitan Dade County
Department of Environmental Resources Management

PROJECT CLASSIFICATION	NUMBER OF APPLICATIONS	NUMBER OF APPROVALS	NUMBER OF DENIALS

Period beginning _____ and ending _____. Certified
this _____ day of _____, 19____, by

Susan Markley, Chief
DERM, Natural Resources Division



Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Weatherall
Secretary

May 27, 1998

Craig K. Grossenbacher, Chief
Coastal Resources Section
Metropolitan Dade County
Environmental Resources Management
33 S.W. 2nd Avenue, Suite 400
Miami, FL 33130-1540

RE: Memorandum of Agreement (MA-13-114)
Board of Trustees, DEP, and Metropolitan Dade County
Regarding proprietary authorizations for minor projects on sovereign submerged lands

Dear Mr. Grossenbacher:

I am in receipt of your May 8, 1998, letter to Larry O'Donnell of the DEP Southeast District Office in West Palm Beach regarding the above-referenced Memorandum of Agreement (MOA). You are requesting clarification from DEP on whether the approval of structures designed for the overwater storage of vessels is consistent with the MOA.

I concur that the activities listed and described in your May 8, 1998, letter (Exhibit A) are consistent with the scope of the MOA and, therefore, are within the authority delegated from the Board of Trustees to the County to issue proprietary authorizations for those activities. [The Board of Trustees approved the MOA on December 12, 1995. A copy of the MOA and the original Board certification are attached (Exhibit B).]

This letter and your May 8 letter shall be attached to the original MOA. If I can be of any further assistance, please do not hesitate to contact me at 850/921-9880 or Suncom 291-9870.

Sincerely,

Phil Coram, Chief
Bureau of Submerged Lands and Environmental Resources

PC/vj
Attachments

cc: Susan Markley, Joanne Clingerman, Dade Co. DERM
Larry O'Donnell, Leonard Nero, J. St. Laurent, Valerie Jones, Bob Gough, Michael Ashey,
Charles Knight, DEP

May 8, 1998

Mr. Larry O'Donnell, Environmental Manager
Florida Department of Environmental Protection
400 N. Congress Avenue
West Palm Beach, FL 33401

Re: Memorandum of Agreement regarding proprietary authorizations for minor projects on state lands

Dear Mr. O'Donnell:

Please consider this letter as a follow-up to our recent conversation regarding the aforementioned Memorandum of Agreement (MOA) between the state and the county for proprietary authorization for minor projects on state lands. The Department is seeking clarification of whether or not the approval of structures designed for the over water storage of vessels is consistent with the MOA. It was my understanding that FDEP agreed that a formal modification of the MOA is not necessary and that the county has the authority to issue proprietary authorization for the following projects:

- I. The installation and repair of private residential single-family boat lifts, elevators, hydrohoists, davits and davit pads or other similar structures designed for the over water storage of vessels that meet the requirements of F.S. 403.813 provided the following criteria are met:

The structure(s):

shall not involve the dredging or filling other than piling installation

shall not substantially impede the flow of water or create a navigational hazard

- shall be used only for recreational, noncommercial activities associated with the mooring or storage of boats (including personal watercraft)
- shall not facilitate the mooring or storage of more than two (2) vessels per dock

- II. The repair or replacement of existing boat lifts, elevators, hydrohoists, davits and davit pads or other similar structures designed for the over water storage of vessels other than single family detached residences that meet the requirements of F.S. 403.813 provided the following criteria are met:

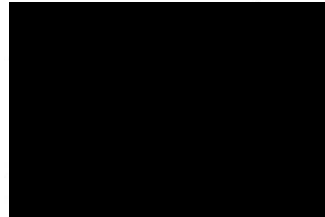
proprietary authorization from the State of Florida shall exist for the structure that is to be repaired or replaced

- the lift, elevator, davits and davit pads or similar mooring structures shall be repaired or replaced in the same location and configuration as the structure being replaced

- no fill material shall be used other than for the replacement of the existing piles

Please review this letter and indicate FDEP's concurrence by signing on the line below and returning the enclosed copy of this letter to us. The Department intends to attach a copy of this letter to the original MOA.

Please contact me if you have any questions or comments at (305) 372-6575.



Craig K. Grossenbacher, Chief
Coastal Resources Section

Florida Department of Environmental Protection concurs with the above.

Larry O'Donnell, Environmental Manager
Florida Department of Environmental Protection

Date

Department of Environmental Protection

Lawton Chiles
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Virginia B. Wetherell
Secretary

STATE OF FLORIDA

COUNTY OF LEON

CERTIFICATE

I, Judy Brooks, do hereby certify that the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, met on December 12, 1995 and approved the following Item 4 on the agenda for that date.

Item 4 Metropolitan Dade County/DERM Memorandum of Agreement

REQUEST: Authority to enter into a memorandum of agreement (MOA) with Metropolitan Dade County regarding minor activities that qualify for an exemption or a letter of consent.

COUNTY: Dade

APPLICANT: Division of Environmental Resource Permitting

STAFF REMARKS: Because of local government rules that require applicants to obtain proprietary authorizations before issuance of a local permit, delays have occurred in the approval process for certain minor activities:

Staff of the Department of Environmental Protection (DEP) and Dade County Department of Environmental Resources Management (DERM) have identified a list of activities, the processing of which can be expedited without weakening environmental protection (see Attachment A of the proposed MOA). All of the projects listed in Attachment A are statutorily exempt from regulatory permitting at the state level and are either administratively exempt from proprietary review or require a routine proprietary letter of consent. The applicant will apply to DERM, and, if authorized by DERM, the appropriate exemption letter or letter of consent from the Board of Trustees will be attached to the local permit. The proposed process will not diminish environmental protection because DERM staff currently conducts site assessments for all of these minor activities...

Staff believes that the proposed process for project types listed in Attachment A of the MOA responds to the goals of eliminating duplication and reducing processing time with the additional benefit of site inspections. This list was developed after recognizing that DEP staff essentially approves the same projects as does the staff of DERM. The only apparent difference is the time lapse between authorizations. Since DEP staff will no longer review the listed activities, the net effect will be a slight reduction in workload for DEP Southeast District staff, no increase in workload for DERM staff, and reduced processing times for applicants.

Certificate for Item 4
December 12, 1995 Trustees Agenda
Page Two

The MOA is being presented for approval so that, upon approval by Metropolitan Dade County, it may be implemented immediately without returning to the Board of Trustees. This approval is sought to allow the Secretary of DEP to sign the MOA. If Metropolitan Dade County requests any substantial change, it will be brought back to the Board of Trustees for consideration.

RECOMMEND APPROVAL

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Board of Trustees of the Internal Improvement Trust Fund's seal on this 13th day of December A.D., 1995.


Jay A. Bieks
Cabinet Affairs Director

SEAL

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