

## **Technical Advisory Group**

**4/18/08 Meeting Minutes**

**9AM to 11:30AM**

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**ATTENDEES:** Lee Cook, Tom Crisman, Derek Doughty, Scott Emery, Rhonda Evans, Eric Fehrmann, Steve Gran, Ann Hodgson, Dale Meryman, Tim Neldner, Mark Sramek

**GUESTS:** Clark Hull (SWFWMD)

**EPC ATTENDEES:** Leslie Campbell, Chris Cooley, Pete Owens, Debbie Sinko, Bob Stetler, Mike Thompson, Andy Zodrow

### **HANDOUTS:**

Bob Stetler re-iterated the importance of completing the white papers for the different topics. The reasonable use discussions and recommendations were used by EPC staff to create the reasonable use section in the Basis of Review (BOR). Any further recommendations for the BOR should be in the form of a white paper. The topic for today is Mitigation and the topic for the next meeting will be Classification. Representatives from the TAG will need to present their progress (and hopefully written recommendations) to the Stakeholders group on June 2<sup>nd</sup> at 3pm. There will also be a follow up meeting a month after for the TAG representative(s) to answer any follow up questions the Stakeholders may have. The Stakeholders would then give their recommendations to the EPC Board. The TAG members were selected by Dr. Garrity and the Stakeholders were selected by the EPC Board.

Bob Stetler opened the discussion for the TAG to decide who should attend the Stakeholders meeting. He noted that Dale Meryman is both a TAG and a Stakeholder member. A TAG member suggested that the white papers (if completed) be given to the Stakeholders so that the TAG member didn't have to give a presentation. The TAG member could just read off the white paper and answer any questions.

A TAG member suggested that for the Process white paper, instead of having multiple people draft a white paper, only 4 or so should get together and create the draft.

Dale Meryman suggested that the Stakeholders have an additional meeting in between the June 2 and the follow up meeting a month later. This would aid the Stakeholder in their discussions because they are also dealing with the Pollution Recovery Fund projects now and are limited on time.

The Process sub-committee requested that they be able to meet to work on their white paper. Some members were absent from the meeting today, therefore the TAG members wondered if they could email the missing members to ask what their availabilities are. Bob Stetler noted that the communications should go through him. Members should email him available dates and he will schedule the meeting.

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As for the other sub-committees, Ann Hodgson has the papers for the Mitigation and Tom Crisman from the Classification group would then be able have their draft paper prior to their meeting (May 16<sup>th</sup>) and finalize the paper at the meeting.

A TAG member suggested that the Mitigation sub-committee meet after the full TAG on May 16<sup>th</sup> to finalize their white paper.

Approval of past meeting minutes:

January 18<sup>th</sup> Mitigation sub-committee meeting-Approved

February 19<sup>th</sup> Process sub-committee-Approved

February 28<sup>th</sup> Process Sub-committee-Approved

March 21<sup>st</sup> Full TAG-on hold until next meeting

April 3<sup>rd</sup> Full TAG (2<sup>nd</sup> half of Reasonable Use)-on hold until next meeting

Bob Stetler opened the Mitigation discussion by stating that as Hillsborough County grows, mitigation banking should be an option for the creation of wetlands. Should there be something in the BOR or Applicant's handbook? Should the agency try to promote mitigation banks? Mitigation banks on public lands?

A TAG member mentioned that other entities were concerned with the competition aspect between private vs. government mitigation banks.

A TAG member mentioned that two clients interested in constructing mitigation banks specifically said that they did not want to build in Hillsborough County due to EPC. Bob Stetler asked if the TAG member knew the reasoning, the member responded that the past EPC staff discouraged mitigating offsite.

Should the agency try to promote mitigation banks? Mitigation sub-committee says yes, this is something that EPC should try to encourage. In addition the sub-committee believes that there should be many options for the land owner when it comes to mitigation.

A TAG member noted that mitigation banking shouldn't be discouraged however, a governmental agency should be neutral and not encourage mitigation banking.

It was mentioned by Bob Stetler that mitigation will still be the back end of the process and avoidance minimization will be first. A TAG member agreed stating that is like the Federal stance.

A TAG member noted that the Tampa Bay Estuary Program has a report of the wetland areas that have been lost around Tampa Bay, and any new banks should look at those habitat types for re-creation.

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A TAG member questioned if the mitigation would be contributing to the county's environment (wetland restoration projects) could that help with the justification of the impact. Bob Stetler answered that it was a topic for the classification discussion.

A TAG member noted that many different agencies have to review and permit a new mitigation bank, not just EPC. Bob Stetler agreed and added that once a bank had been established, the credit cannot be argued because they were determined at the start of the bank.

The mitigation sub-committee agreed that creating a mitigation bank document for EPC to follow would be re-inventing the wheel and if this was the path EPC wanted to take in the future then the agency should follow the Federal model.

The mitigation sub-committee created two documents, one on mitigation banking and one on mitigation process. Starting with the mitigation banking paper discussion: Mitigation banks do not have minimum size requirements. Mitigation banks should be in disturbed uplands (pastures, historic dried out wetlands, etc.).

Mike Thompson stated that in Ch 1-11.08 the wetland impacts may be mitigated for through the purchase of credits through a fully permitted bank or from a regional offsite bank. All efforts should be made to locate the mitigation area within Hillsborough County. There are many banks in the county, but most are internal banks for utilities (Tampa bay water, Hillsborough County Public Works, etc.).

Clark Hull noted that none of those internal banks are classified as formal Mitigation Banks. A TAG member asked if Mr. Hull thought these un-formal banks had been successful. He responded that there were failed attempts in the beginning due to hydrology, but now they are better.

EPC staff noted that one main concern would be the location of the banks, even if they are within the watershed, but within, as an example, Polk County there could not be the creation of tidal wetlands.

A TAG member noted that EPC should be a commenting agency on banks within adjacent counties (within a watershed shared by Hillsborough). Then EPC may feel more comfortable accepting those credits outside of the county boundaries.

Andy Zodrow stated, regarding mitigation banks outside of Hillsborough County, that one of the main reasons not to have mitigation outside of the county is that staff cannot travel outside of the county to do compliance. However, with a bank there is only the transferring of the credits and there should be no compliance. Politically there may be issues because citizens of Citrus Park, for example, might be upset that their neighborhood wetland was impacted and then mitigated for over in Polk County.

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A TAG member asked Mr. Hull if there is a bond for the mitigation bank and what is the compliance process to assure that the bank is functioning? Mr. Hull responded, there are rarely bonds but there are some other mechanisms of financial responsibility to fund the long term management of the bank and every two years that process gets re-assessed. The rules require a conservation easement for the bank and the initial UMAMs are just for the preservation of the property. That is for if the bank was never fully constructed, you could still get preservation credits out of it. Once the construction (grading, planting, etc.) is done more credits will be given to the bank, then more will be given once success is shown. Mr. Hull also noted that the SWFWMD sometimes permits credits outside of their own district. Then they have the same problem that the bank is outside of their jurisdiction and therefore they can't do compliance on it. But, they have reasonable assurance that based upon the mitigation rules in place, that bank will be successful. The process for permitting the banks would be the MBRT process. However state rules do not reflect this. Bankers come to SWFWMD and get an ERP, then they take their permit and go to the Federal agencies. Big banks vs. small banks: Mr. Hull prefers smaller banks, there are smaller (100's acres instead of 1,000's) that may be the last undeveloped areas in a wildlife corridor. In addition, the smaller the banks the more diversity for the area. Instead of having one huge mitigation area with little diversity, there could be smaller ones such as a tidal area, an estuarine, seep slopes, etc. The downside is when someone has left over land on their site they may try to be a mitigation bank. With the bigger banks you may be able to get the whole ecosystems. At the state level, if the mitigation is regionally significant you would not have to do elimination reduction (EPC's avoidance minimization). The problem is that some "bankers" would request impacts through this provision, even if the project hadn't intended to be a bank. Mr. Hull suggested that EPC address this potential problem in the rule.

The TAG was now instructed by the Mitigation sub-committee to discuss the Mitigation Banking document and address the specific questions in the document.

In regards to the SOP, EPC and SWFWMD have an MOU, couldn't that be used to give EPC comfort in regards to compliance of mitigation banks outside of Hillsborough County? Clark Hull answered that the MOU doesn't mention Mitigation banks. The MOU speaks to projects that both agencies have commented on and permitted. EPC does not permit mitigation banks outside of Hillsborough County. Mr. Hull didn't know if EPC could even be granted to do the compliance outside of the county. Andy Zodrow said even if it was granted over to EPC he still didn't know if it would be valid, and recommends against it. To further clarify, the beginning question was whether or not SWFWMD would do the compliance on the mitigation banks outside of the county and the MOU would allow EPC to accept this.

Mike Thompson has been working on the draft BOR for the mitigation section. The handbook would then contain further details.

Pete Owens re-iterated that mitigation banking is already mentioned in the rule, but it was up to the committee to decide if it needed to be expanded on.

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Andy Zodrow noted that encouraging mitigation banking is almost impossible to be done by rule because it would then inadvertently discourage onsite mitigation. Mr. Zodrow also noted that mitigation banking couldn't be made any easier because it is through state and federal rules, therefore the only way to encourage it is to make everything else harder to do, which would not be a good thing. If mitigation banks were to be encouraged by the agency it should be done through policy and not by the rule.

A TAG member noted that to encourage mitigation banking a statement should be added to the BOR or handbook that describes the benefits of banks.

Clark Hull mentioned that a way to encourage mitigation banking is to require more assurance on onsite mitigations, such as the Conservation Easements (CEs) and 2 year recertification processes. Then developers might be more likely to buy credits from a bank instead of going through the same process for a small wetland. Andy Zodrow noted that a CE and financial surety is already required for mitigated wetlands.

A TAG member noted that they should consider removing obstacles for creating mitigation banks, such as a small impact that needs to occur to hydrate the bank, this should be evaluated in the impact justification part of the review.

A TAG member noted that even the smallest wetland has importance, another member added that smaller wetlands are some of the hardest to engineer. In addition, a study was done that noted a small wetland the size of the conference room was the habitat and breeding area for salamanders for a 3 mile radius. Therefore, the question was how to incorporate these areas back into state lands? It was suggested for the "mom and pops" with the minor impacts such as driveways. It was also suggested that for some of the power line easements, this could work because the power companies don't keep trees under the power lines so these smaller non-forested wetlands would be a benefit in the easements.

It was suggested by a TAG member that preserving lands with these smaller wetlands be done. EPC staff noted that the developers have stated that these smaller wetlands are the most expensive to save due to the setbacks, fill slopes, etc. Now the small wetland has doubled or tripled in the amount of land needed to build around it. A TAG member noted that perhaps there could be new incentives to preserve these small wetland areas.

EPC staff raised the question whether or not these mitigation areas include uplands as well because most animals need both wet and dry ground to survive and a mitigation bank that is wall to wall wetlands surrounded by developments would not function for animals. Therefore these types of wetland and upland banks should be encouraged.

A TAG member noted that certain geographic locations for banks and smaller banks should also be encouraged.

Mitigation Process Document:

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EPC staff noted that mitigation is not justification for the wetland impact. Phase 1 of the review is to look at the justification for the impact, once approved for the impact phase 2 is the details of the mitigation.

The document notes possible checklist for the mitigation process. The mitigation sub-committee has not received any comments from other members regarding a checklist for mitigation.

It was suggest by a TAG member that for the UMAM plus these smaller wetlands (vernal pools, prairie ponds, etc.) be a plus on the UMAM. Another TAG member disagreed and said that giving judgments and adding credits to “better” wetlands because they are value judgments would not be good.

A TAG member also noted the whether or not there is a UMAM plus, EPC needs to agree with SWFWMD and vise versa because if EPC does UMAM plus it would be contrary to SWFWMD.

In regards to one of the last sections with respect to multiple EPC staff in the mitigation meetings, EPC staff noted that multiple staff persons are needed for the meetings, such as the project scientist, project engineer, supervisor, director, etc. However for some less difficult and smaller projects and exemptions these mitigation committee meetings have been circumvented to save time.

Meeting adjourned.