

## **TECHNICAL ADVISORY GROUP WHITE PAPER PROCESS**

During the initial formulating meeting of the Technical Advisory Group (TAG), EPC staffed asserted a plan implementing the actions of the committee which would be based upon sub-committee recommendations on selected topics to the whole group. In this meeting, Process was a requested topic addition from the TAG. Subcommittees were formed for the topics presented by EPC and EPC staff then selected who, among the TAG would be members on subcommittees and who would be “other interested parties”. The initial external and internal process committee meetings unanimously agreed to combine their forces in order not to waste time segregating their efforts.

The initial charge provided in the outlines from EPC to the two process sub-committees are as follows”

<b>Basis of Review</b>	<b>Applicant’s Handbook</b>	<b>PGMD/Muni.</b>	<b>WMD</b>
Reasonable Use	Definitions/Terms	Setbacks	MOU
UMAM	Forms/Instructions	Rezoning	UMAM
Delineations	Procedures/Processing	Construction Plans	Delineations
Review Criteria	Enforcement/Inspect	Process/Timing	Process/Time
Fee Schedule	Criteria for Evaluation	Land Alt/Excavation	
	Basin Criteria		

While individual meetings have delved into a wide cross-section of these issues, the Applicant’s Handbook, and all items incorporated therein, have not been addressed in any meeting to date and are therefore not included in this position paper.

It is important to note that this white paper has been produced to meet a staff deadline. Staff has not been able to share all of their work on drafts of the Basis of Review or the Applicants Handbook with this committee prior to this white paper.

### **DELINEATIONS:**

As agreed in the 11/17/07 meeting, reciprocity and trust between agencies concerning wetland delineations should be the norm. The committee recommends that wetland hydroperiod determinations (aka wetland water level indicators) are also added to this reciprocity. It is the consensus of the Process Sub-committee that a wetland line set by any of these agencies should be accepted by the other agencies and termed the “State Wetland Line” and allowed to be noted in multiple ways, especially in legend format, rather than requiring actual text labels on every construction plan sheet. The fostered trust would reduce duplication of effort and public expense. It is neither necessary, nor desirable, for either agency to accompany on delineations if another agency has taken the lead in response to an applicant request.

Chapter 1-11 and references to Section 62-340 F.S. should be revised and phrased to make this a requirement. Additionally a MOU should be created to address joint training of the combined and appropriate staff members and be conducted to maximize the consistency between the two agencies in the delineation process. The MOU should also address the development of a joint training course specifically for private sector/NGO interested parties. This master MOU will undoubtedly include other topic areas. The Sub-committee recommends adding hydroperiod (SHW/NP/etc) information as the SWFWMD does not currently recognize EPC determinations of these values. The entire process described above should include provisions for the incorporation of updates and changes that may occur in the future.

The sub-committee recognizes there will still remain potential inconsistencies between the Corps of Engineers approach to wetland delineation as compared with the unified EPC/SWFWMD/FDEP approach. In the interim, it is the consensus recommendation of the Sub-committee that the Applicant's Handbook include information making it clear to the Applicant that the wetland line established by EPC (or SWFWMD/FDEP) may not be identical with one established by the Federal Government. It is also the consensus of the Sub-committee that EPC staff should stay abreast of the federal process, and modify future editions of the Applicant's Handbook to reflect changes in the Federal approach, as these become finalized.

Pro: Reduction in duplication of effort, reduced cost to public entities thereby reducing fees, greater ease of obtaining delineation within reasonable time frame, reduced chance of disagreement, clear and consistent approach taken in handbook.

Con: None identified.

### **PROCESS AND TIMING (OVER-ARCHING)**

The Sub-committee recommends the head of EPC's Wetlands Division review EPC's obligations under the Comprehensive Planning Process. He/she should determine which obligations are beyond the mandates provided within the Wetlands Rule and which are outside the technical expertise of the EPC Wetlands Staff. Following this, the Head of EPC's Wetlands Division should initiate a process to rectify/rescind those obligations which are outside of the mandates of the Wetlands Rule and/or outside of Staff expertise.

The Sub-committee is also concerned that it is not always a certainty that EPC actually receives remuneration from fees charged by other agencies/departments for work done by EPC. The head of EPC's Wetlands Division should ensure that EPC receives fair remuneration from other agencies/departments for its valid efforts.

### **PROCESS AND TIMING (WMD)**

In the 11/29/07 meeting, a consensus was reached that the EPC should incorporate the state's time frames for all reviews that cross-over through MOU's or Rule revisions with SWFWMD. This assumes EPC is provided information in a timely manner.

Pro: Applicant can rely upon state guidelines for time frames and methodology as outlined in state regulations for "delegated" authority.

Con: None identified

### **PROCESS AND TIMING (PGMD/Municipalities)**

In the 11/29/07 meeting a consensus was reached that the EPC should incorporate all PGMD time frames for reviews in connection with county processes. EPC should be in sync with each municipality's review time frames for any review which proves necessary for EPC to be involved in. It is assumed that the Basis of Review will be adopted by reference as a part of CH 1-11. Time frames should be spelled out in the Applicant's Handbook. EPC should undertake its review, comment and regulatory obligations in an equitable manner regardless of whether these are being done for the County or for a particular Municipality. Effort should be made between EPC and each Municipality to develop an inter-local

agreement for the consideration/incorporation of EPC comments and regulatory obligations within each Municipality's evaluation procedures for construction plans

Pro: Applicant can rely upon County/Municipality regulatory time constraints without fear of significant delay caused by EPC unfamiliarity with regulations or codes.

Con: None identified.

### **PROCESS AND TIMING (Planning Commission)**

The members of the Sub-committee are of the opinion that, for any assistance (recommendations, reports, opinions, etc.) provided by EPC at the request of the Planning Commission, EPC should incorporate all Planning Commission time frames. This recommendation by the Sub-committee assumes the information provided by the Planning Commission contains all the information required by EPC in its evaluation and that the complete information is quickly routed to EPC to facilitate their timely review. The Sub-committee recommends that EPC's reviews and comments on Land Use and Comprehensive Plans be confined to those aspects which EPC staff has technical expertise and competence in.

Pro: Allows Wetlands Division staff to focus resources and energies on issues that affect wetlands. Reduces costs and manpower inefficiencies.

Con: None identified.

### **FEES (OVER-ARCHING):**

The committee requested EPC justification for the current fee schedule (i.e. how many man hours on average, from which category of employee, are anticipated for the specific reviews for which fees are charged?) No data was provided to back up the fee charge requests, therefore the actual fees charged cannot be commented upon.

Pro: Allows Wetland Division staff to focus resources and energy (time and staff availabilities) on issues that affect wetlands, thereby reducing costs and man-power inefficiencies.

Pro: Appropriate fees (both in area of review and in amount) should be charged by EPC when meaningful, specific comments are provided to the Applicant or during the review process.

Pro: Fee studies must relate to the capture of staff time/cost, devoted to the task. If the task is a review of county or municipality permit applications, the staff time should not duplicate the efforts of the county or municipalities.

Con: If no data is kept, how can fees be justified? If no fees are charged for a valid effort on the part of EPC, there is an unfunded cost borne by the agency.

### **Development Approval Fees:**

The following activities were identified, from Chapter 1-6.05 – Wetlands Management, as those for which an actual construction approval would be issued, thereby potentially authorizing an impact to a wetland:

1	Land Excavation Permits	
	a. New and Expansion	\$870

	b. Extension and renewal	\$650 *
3	Subdivision Application	
	c. Construction	\$490
	f. As-Built Verification	\$300
5	Phosphate Mining	
	e. Land Alteration	\$500
	f. Amendments	
	i) Changes	\$1000
	ii) Additional Acreage	\$500 or pro rata
7	Commercial Site Development	\$500
8	Natural Resources	\$270 (Assuming this applies to all
	Natural Resource Other projects)	
9	Miscellaneous Activities	
	b. Docks, etc	\$150

Several additional fees show up from PGMD Fee Schedule

Minor Site Plan EPC Review	\$500
Amendment to Land Excavation Permit	\$975
Land Excavation Special Use Permit	\$300

\* Committee questions high amount of this fee, as compared to that for new submittal, when fee is for extension or renewal of previously reviewed information.

These reviews appear to be in accordance with EPC Ch 1-11 guidelines and as addressed above should follow the time frames set out by PGMD.

The committee recommends that EPC should encourage pre-application meetings for these applications and so long as applications remain on paths outlined during this meeting, recommended modifications should be limited in scope and breadth to specific deviations from that path. As long as EPC has been provided valid information during the pre-application process, EPC should be able to provide rebuttable presumptions as to Justification, Minimization and Avoidance and other issues critical to EPC's concern at this meeting that can be relied upon by the applicant. A record of the minutes of these meetings will be kept and provided to the applicant within a reasonable time frame.

Pro: Applicant can rely upon County/Municipality regulatory time constraints without fear of significant delay caused by EPC unfamiliarity with regulations or codes. Applicant can rely upon responses from EPC resulting in quicker approvals.

Con: Fees can/cannot be justified, and may change.

Con: Removal of any fees could affect the EPC budget and potentially remove the EPC from the early planning process.

Con: What specific criteria must be met before an applicant is charged a fee in a pre-application meeting? Who decides if a meeting has been specific enough to charge a fee, the PM, a

supervisor? Would there be a PERCEPTION from the public that now that a fee has been charged a permit is guaranteed?

#### **OTHER FEES:**

The remaining review fees do not specifically approve wetland impacts and do not constitute development approval. Nearly all of these reviews are “preliminary” and, in the sequence of reviews, are followed by additional county review processes, and additional EPC reviews, before any development approval can take place.

The following is an abbreviated list of activities, from Chapter 1-6.05 – Wetlands Management, as those for which an no construction approval would be issued, thereby not authorizing an impact to a wetland:

#### **Zoning Process**

Rezoning application	\$300
Site Plan District PD Rezoning	\$300
Zoning Variance Application-Wetland Setback	\$270
Special Use Applications	\$300

#### **DRI Process**

Simple , moderate or complex	\$1200
Annual Report Review	\$1200
Substantial Deviation	
Simple, moderate or complex	\$1200
Incremental/Subsequent DRI Review	
Simple, moderate or complex	\$1200

#### **Subdivision Process**

Preliminary Plat-EPC Review	\$370
Subdivision Final Plat-EPC Review	\$200
Certified Parcel and minor subdivision review	\$230
Reviews & processing of waivers (LUHO)	\$300

#### **Site Development Process**

Preliminary Site Development Plan-EPC Review	\$500
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#### **Land Alteration Process**

Review & Processing Apps to LUHO	\$270
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#### **Phosphate Process**

Annual Review Related to Permitted Mining	\$375
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It has been suggested by EPC staff that these reviews are necessary to “steer” applicants in particular directions. Additional reasons cited by EPC staff include the fact that out of town developers and/or engineers are not familiar with the local rules and would benefit from this “early involvement”. It appears, however, that the information provided to the applicant cannot be explicitly relied upon for use in design, as it is general in nature and limited by knowledge of technical information which is not currently available to the applicant. (See Attachment A for EPC’s “default” Zoning approval letter) Many examples of non-binding, non-reliant type comments are evident in the attached document, as well as those received for other reviews.

The committee expects EPC to be aware of the complexities and spatial connections of the wetlands within Hillsborough County (having been in existence for 40 years). High priority systems, connectivity, and special consideration areas should already be mapped (though not field truthed) with criteria for their protection noted and published (if any different from the norm). Determinations of “special issues” after any application should not occur.

When EPC is asked by another agency or County department to comment upon re-zoning, DRI, Preliminary Plans, etc. (actions which do NOT specifically approve wetland impacts nor constitute development approvals) it is the Sub-committee’s recommendation that the Applicant should NOT be charged a fee for these reviews. This is because the comments provided by EPC are most often general in nature and cannot be explicitly relied upon by the Applicant in future design and construction plans. Should the Applicant feel he/she has plans with sufficient detail at the early planning stage, EPC should consider a voluntary process between the Applicant and EPC wherein a fee is charged to the Applicant in exchange for a detailed, specific, timely review and evaluation by EPC that can be relied upon / rebutted by the Applicant.

Should the Applicant desire to obtain a Conceptual Approval, and feels he/she has plans with sufficient detail at the early planning stage, EPC should consider a voluntary process between the Applicant and EPC, wherein a fee is charged to the Applicant in exchange for a detailed, specific, timely review and evaluation by EPC that can be relied upon / rebutted by the Applicant.

Pro: Applicant can rely upon County/Municipality regulatory time constraints without fear of significant delay caused by EPC unfamiliarity with regulations or codes. Applicant can choose to have EPC participate or not (at their own risk) in early processes. Applicant can rely upon guidance provided by EPC if involved.

Con: Fees can/cannot be justified, and may change.

### **Setbacks:**

Setback requirements are part of Hillsborough County’s Land Development Code. PGMD is the County Department charged with the enforcement of these code requirements. The involvement of EPC in the determination of “setbacks: under the LDC should be limited to those situations involving potential secondary impacts to wetlands as described in 1-11.08.2 of the Wetlands Rule. *“The Commission shall apply Rules 62-345.200-.900, F.A.C., in determining the required mitigation for secondary impacts. In determining secondary impacts, the Commission shall consider the diminishment of ecological value in those wetland areas adjacent to a proposed direct wetland impact.”*

Pro: EPC Wetlands Division must use its limited resources and manpower to pursuing its mandate under Ch. 1-11. Inappropriate involvement in the review of setbacks and/or setback impacts is outside the purview of the Division and is an inefficient use of those resources.

Con: None identified.

## REASONABLE USE:

The following information contains the Reasonable Use Standard as drafted by EPC.

### REASONABLE USE STANDARD:

#### Definitions:

(1) *“Reasonable use of the land.”* Pursuant to Section 1-11.07, a wetland or other surface water shall be authorized to be impacted if denial of the impact to the wetland or surface water denies or precludes reasonable use of a parcel of property. For purposes of this Basis of Review and the Commission Wetland Rule, “reasonable use” shall mean an actual, present use or activity on a parcel of real property or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject parcel of property, and which are compatible with adjacent land uses. Reasonable use of the property does not mean the highest and best use of the property. Any impacts authorized under this rule shall be reduced to the minimum amount necessary. The Commission recognizes that each property in Hillsborough County is unique. In determining reasonable use of a parcel of property any of the following factors may be considered, however any one or more of these criteria in itself will not necessarily constitute reasonable use:

- a.) The current zoning of the parcel of property on which the wetland or other surface water is located;
- b.) Whether the denial of the impact would result in a loss of all or substantially all economic value of the property;
- c.) Existing development on or use of the property (including the applicable zoning, permitting and subdivision history of that parcel);
- d.) The buildable area of a parcel as shown by a survey or drawing of the parcel of property (to scale) accurately depicting the location of the wetland or other surface water including the minimum setbacks required by any applicable municipal or Hillsborough County codes;
- e.) Whether the impact is for the purpose of accessing available buildable uplands where no alternative legal means of access is available and reasonable use of the entire property would otherwise be unattainable;
- f.) Documented efforts by the applicant to redesign the proposed development, structure or use in a manner to retain or preserve the wetland or other surface water;
- g.) The wetland or other surface water regulations in effect at the time the property owner acquired title to the parcel of property;
- h.) Whether the impacts are solely for the purpose of environmental restoration projects;
- i.) Reasonable efforts by the applicant to seek waivers or variances from any other development restrictions that would result in or necessitate impacts;
- j.) Whether the impacts are necessary for the protection of public health and safety; and
- k.) Any other pertinent information or special circumstances affecting the development of the parcel of property, including without limitation, any unusual topography and fill requirements, or unique engineering requirements.

(2) *“Land.”* Determination of what constitutes the “land” as provided in Section 1-11.07 for purposes of this Basis of Review and the Commission Wetland Rule is a question involving the consideration of three factors: physical contiguity; unity of ownership; and unity of use. The land shall be defined as the entire parcel or property under common ownership. In the event a portion of the property is subdivided or separated from the parent tract after the effective date of this rule and a denial of reasonable use is caused by a self imposed hardship then authorization to impact wetlands will be denied under this rule.

The committee recommends changing “reasonably foreseeable” to “future” in the 6<sup>th</sup> line down. The committee further recommends the addition of l). net environmental benefit, as described in the first

paragraph of 1-11.07 ENVIRONMENTAL PROTECTION COMMISSION AUTHORIZATION, and in 1-11.08.04 MINIMUM REQUIREMENTS OF A MITIGATION PLAN. and m). pending or potential future changes to existing land use designations that are suitable for the subject parcel and compatible with adjacent land uses.

The committee recommends the complete removal of (2) Land.

Pro: The list of factors must be adjusted (factors removed, added and/or revised) over time

Con: The committee has raised concerns as to how to document minimization efforts, etc. List may need to grow as time goes on.

Con: Too much time and effort has been expended in trying to define the term reasonable use because and only because it is found in Chapter 1-11. It should be deleted from Chapter 1-11. The EPC legal staff is adequately funded to monitor case law regarding highest and best use (the basis of all taxation in the United States) and therefore it should be interacting with the Judicial Branch to determine what is reasonable.

Comment: Bob Stetler's comment at Tuesday's public hearing regarding the use of wetland classification as a factor considered in the Basis of Review needs to be included.



## ATTACHMENT A

“Staff from the Wetlands Management Division of the Environmental Protection Commission of Hillsborough County (EPC) has reviewed the above-referenced site plan and has no objections to the petition provided the following statement is included as a final zoning condition. **The construction and location of any proposed wetland crossings/impacts are not approved by this correspondence, but shall be reviewed by EPC staff under separate cover (Emphasis added)** pursuant to Chapter 1-11, Wetlands, Rules of the EPC, to determine whether such impacts are necessary to accomplish reasonable use of the subject property.

### **Recommended Zoning Condition**

• **Approval of this zoning petition by Hillsborough County does not constitute a guarantee that the Environmental Protection Commission approvals/permits necessary for the development as proposed will be issued, does not itself serve to justify any impact to wetlands, and does not grant any implied or vested right to environmental approvals. (Emphasis Added)**

### **INFORMATIONAL COMMENTS:**

The following specific comments are made for **informational purposes only (Emphasis Added)** and to provide guidance as to the EPC review process. However, **future EPC staff review is not limited (Emphasis Added)** to the following, **regardless of the obviousness of the concern (Emphasis Added)** as raised by the general site plan and **EPC staff may identify other legitimate concerns at any time prior (Emphasis Added)** to final project approval.

• The subject property contains wetland areas, which have not been delineated. **Knowledge of the actual extent of the wetlands is necessary in order to verify the avoidance of wetland impacts pursuant to Chapter 1-11, Wetlands, Rules of the EPC. (Emphasis Added)** Prior to the issuance of any building or land alteration permits or other development, the wetlands must be field delineated in their entirety by EPC staff and the wetland line surveyed. Once delineated, wetland surveys must be submitted for review and formal approval by EPC staff. The approved wetland line must be incorporated into the development of a site plan. The wetland line must appear on all site plans, labeled as "EPC Wetland Line", and the wetland must be labeled as "Wetland Conservation/Preservation Area" pursuant to the Hillsborough County Land Development Code (LDC).

• **The acreage of the wetland areas, and associated wetland setbacks, may result in the applicant's inability to construct the project as envisioned, and it may be necessary to reduce the scope of the project and/or redesign the parcel configurations and infra-structure layout to avoid wetland and wetland setback impacts. (Emphasis Added)**

• The site plan depicts wetland impacts which have not been authorized by the Executive Director of the EPC. Development within wetlands of Hillsborough County which destroys, reduces or impairs the wetland, or which contributes to the present or potential future destruction, reduction or impairment of the environmental benefits provided by the wetland or a portion thereof, constitutes pollution as defined by Chapter 84-446, Laws of Florida, as amended. **This is prohibited except as to what is specifically authorized in writing by the Director or his authorized agent. (Emphasis added)**

• As proposed, the site plan would require encroachments into the Wetland Preservation and Conservation Area Setbacks.

• A 50-foot and 30-foot setback must be maintained around each Wetland Preservation and Conservation Area, respectively, and the setback lines must also be shown on all future plan

submittals. *Land alterations within the wetland setbacks are restricted, as per the Land Development Code (LDC) of Hillsborough County. Exceptions are allowed only with specific recommendation of the EPC and with approval of the Natural Resources Review Team of the Hillsborough County Planning and Growth Management Department, and/or the Land Use Hearing Officer. (Emphasis Added)*

- Any activity interfering with the integrity of wetland(s), such as clearing, excavating, draining or filling, without written authorization from the Executive Director of the EPC or his authorized agent, pursuant to Section 1-11.07, Rules of the Commission, would be a violation of Section 17 of the Environmental Protection Act of Hillsborough County, Chapter 84-446, and of Chapter 1-11, Rules of the EPC.