

**TECHNICAL ADVISORY GROUP
POSITION PAPER
AGRICULTURE WETLAND RULE AMENDMENT**

Agriculture in Hillsborough County is recognized as a significant contributor to the local economy. According to a 2005 study, agriculture and the businesses that support the industry have an annual economic impact of \$1.4 billion, providing 20,122 jobs with \$293 million in earnings. In addition to the economic benefits, agricultural land as a part of the open space and rural landscape contributes natural resource and quality of life benefits to the community.

The total area devoted to agriculture is estimated to be 253,229 acres. Much of this farmland also contains wetlands. These wetlands provide for a number of important benefits including wildlife habitat, stormwater retention, water quality treatment, and aquifer recharge. Farmers typically do not earn an income for the value of these benefits that wetlands provide. These benefits accrue to the community at large and cost the agricultural landowner in terms of reduced production area.

As part of the Hybrid Wetlands Proposal, the Environmental Protection Commission of Hillsborough County proposed the following language for agriculture related wetland impacts. The Environmental Protection Commission Board subsequently approved the proposal.

Agricultural Ground and Surface Water Management (AGSWM) - EPC will coordinate with the SWFWMD in the implementation of the AGSWM program for agricultural projects and develop specific rules and standards to incorporate the principles of AGSWM. EPC will consider projects that go through the AGSWM process and receive an exemption from permitting or an Environmental Resource Permit as meeting the EPC reasonable use criteria for impacts. For projects described above and for production related agricultural activities on property engaged in bona fide agricultural uses (except for harvesting primary growth natural forested wetlands), mitigation will be required for cumulative impacts greater than ½ acre and for individual isolated wetlands greater than ¼ acre.

Agriculture Wetland Rule Amendment Summary:

Agriculture activities that may qualify for the exemptions:

Includes site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, harvesting, and construction of access and internal roads, bridges, or culverts to facilitate these operations; construction or maintenance of irrigation and drainage ditches; and construction, operation or maintenance of agricultural use ponds.

Excluded activities:

Excludes logging or timbering in wetlands, construction of permanent or temporary structures such as non-agricultural buildings or residences, or any similar non-agricultural uses of land even if related to bona fide agricultural activities.

Reasonable Use Exemption:

The proposed rule exempts certain wetland impacts from the EPC Reasonable Use criteria.

These include:

- AGSWM – Wetland impacts addressed in a SWFWMD AGSWM exemption.
- Impacts to a non-forested wetland no greater than ¼ acre in size authorized by the WMD through state exemptions in Subsections 40D-4.051(7), (8)(a), (8)(d), (8)(m), (9)(d), or (9)(e), F.A.C.
- Impacts to a non-forested wetland no greater than ¼ acre in size where the impact does not involve conversion to uplands (This will allow excavation). The wetland size impacted can be increased to ½ acre if certain design criteria are met. Cumulative impact cannot exceed ½ acre. Must be authorized by a state exemption or an ERP.
- Impacts to a non-forested wetland no greater than ¼ acre in size (This will allow excavation or filling). Cumulative impact cannot exceed ½ acre. Cumulative impact cannot exceed ½ acre. Must be authorized by a state exemption or an ERP.

Mitigation Exemption:

Wetland impacts that are limited to isolated wetlands ¼ acre or less in size and cumulatively do not exceed ½ acre are exempt from mitigation requirements.

Requires that the impacted area remain in agriculture for 7 years. Otherwise it must be mitigated.

Technical Advisory Group Agriculture Subcommittee Findings:

The Agriculture Subcommittee has reviewed the proposed rule amendment and their comments follow. Comments are divided into two sections. First are “pros and cons” of specific components of the rule. Second are general comments.

Agriculture Wetland Rule Amendment Analysis		
Rule Components	Pros	Cons
Reasonable Use Criteria	<ul style="list-style-type: none"> • Reasonable expectation of regulatory response based on input. • Exemption justified if it enables an agriculture operation to stay in business and not succumb to development pressure. • EPC maintains compliance enforcement. 	<ul style="list-style-type: none"> • A different standard is applied to the agricultural community. • Existing “reasonable use” review already takes into consideration a variety of factors when determining allowable impacts to wetlands
Use of AGSWM Process	<ul style="list-style-type: none"> • Allows for one-stop approval by having NRCS, SWFWMD, and EPC involved at the same time. • There is no need to develop a separate procedure to review agriculture projects. The criteria, procedures, and staff are already in place. 	<ul style="list-style-type: none"> • AGSWM program could change without any public notice or input.
Excavation impacts to wetlands less than ¼ acre and potentially ½ acre (Must be authorized through an ERP or exemption letter)	<ul style="list-style-type: none"> • Minimal functional wetland loss on ag lands • Provides details on thresholds and authorized activities. • Requires appropriate mitigation for potential future impacts. 	<ul style="list-style-type: none"> • The farmer may have a problem getting the Water Management District to authorize in writing the use of an exemption.
Filling impacts to wetlands less than ¼ acre (Must be authorized through an ERP or exemption letter)	<ul style="list-style-type: none"> • Minimal functional wetland loss on ag lands • Provides details on thresholds and authorized activities. • Requires appropriate mitigation for potential future impacts. 	<ul style="list-style-type: none"> • The farmer may have a problem getting the Water Management District to authorize in writing the use of an exemption.
¼ acre mitigation exemption	<ul style="list-style-type: none"> • Exemption justified if it enables an agriculture operation to stay in business and not succumb to development pressure. • Has threatened or endangered species and area of state critical concern as a backstop. 	<ul style="list-style-type: none"> • Could result in a loss of wetlands. • Mitigation may be required for an activity by EPC and not required by the District/State, leading to confusion and additional costs.

Agriculture Wetland Rule Amendment Analysis		
Rule Components	Pros	Cons
EPC acceptance of ERP mitigation	<ul style="list-style-type: none"> • No functional wetland loss on ag lands. • Allows for one-stop approval to the farmer from SWFWMD and EPC. • Allows EPC to maintain compliance enforcement. • Allows EPC the right to require mitigation if not required by the SWFWMD ERP. 	<ul style="list-style-type: none"> • How would EPC enforce DEP or SWFWMD mitigation conditions if mitigation is performed outside the county? • Requires mitigation only within Hillsborough County; this may not be the best ecological mitigation alternative. A basin approach may be best.
Number of years the land must remain in agriculture to maintain mitigation exemption	<ul style="list-style-type: none"> • Provides for time a threshold that the land must remain in agriculture after authorized wetland impacts. • Provides details of permitting/mitigation requirements if time threshold is not followed. • Provides for notification of future land purchaser of authorized wetland impact history 	<ul style="list-style-type: none"> • These exemptions are for farmers, not developers. A short time frame may encourage a farmer to fill wetlands, or cause a developer to pressure the farmer into filling the wetlands as a condition of sale. • Current 7 year requirement does not take into account the impact that a delay in mitigation has on the UMAM analysis.
Section 1-11.12(2)(a) Further Subdivision of Property		<ul style="list-style-type: none"> • Subdivision of the property does not entitle new land owners to the exemptions if they were utilized on the parent parcel, this could be interpreted as a taking.

Comments:

The Hybrid Proposal provided specific requirements to be included in the amendment language including a process for agriculture projects to meet the EPC reasonable use criteria and a limited mitigation exemption for impacts to small isolated wetlands. The proposed amendment language accomplishes both of these goals.

This proposal will reduce duplication and streamline the wetland regulatory process for farmers and will more closely align the EPC Wetland Rule with policies and procedures that the Southwest Florida Water Management District (SWFWMD) uses to address wetlands for agriculture projects.

Some questions have been raised regarding the proposed rule applying different criteria to agriculture. The Environmental Protection Commission has reasoned that agriculture land uses are more compatible with the environment than other types of development and their impacts should be evaluated differently. Agriculture land accounts for 37% of the

land in Hillsborough County and it provides for environmental and aesthetic benefits, including wetlands. A reduction in the regulatory burden that agriculture faces can help the industry remain economically viable and continue to provide these benefits for the community to enjoy.

Impact of Reasonable Use Criteria and Mitigation Exemption:

The current wetland rule does not have a definition for “Reasonable Use”, much less a definition of how it is applied to agriculture. The proposed rule defines the method by which an agriculture project can meet the reasonable use criteria using existing processes that are in place with the SWFWMD. These processes typically take place when land is converting from one agricultural use to another. By utilizing the SWFWMD procedures, EPC can be assured that the proposed impact is for an agricultural purpose and is normal and necessary for the operation.

If a farmer is determined to have met the reasonable use criteria, it does not exempt a farmer from EPC’s mitigation requirements. Under the proposed rule, mitigation will be required for impacts to wetlands equal to or greater than ¼ acre in size. EPC has determined that there are a total of 291 individual wetlands less than ¼ acre in size on land used for agriculture. If these wetlands were all about ¼ acre each, the total wetland acreage would be about 73 acres. The implementation of this proposed rule does not mean that all of these wetlands will be automatically allowed to be impacted with no mitigation. The impact would first have to go through the reasonable use determination which would involve the AGSWM process, an Environmental Resource Permit, or an exemption letter from the Water Management District. The AGSWM process does not allow impacts to wetlands greater than ½ acre and no wetland impacts if the farmer wants to maintain NRCS assistance. This provides for an incentive to the farmer to not impact wetlands on their site. These processes do not allow wetland impacts “just because”; the impact must meet the criteria of the SWFWMD.

The SWFWMD AGSWM program and ERP process typically takes place when agricultural land is converting from one agricultural use to another, such as pasture or citrus to strawberries or vegetables. According to the SWFWMD, the conversion from one agriculture use to another is projected to be about 360 acres per year through 2015. Currently, the Hillsborough County Property Appraisers Office has 177,000 acres, on 7,028 parcels, classified as Agricultural Use in private ownership (Report Dated 2/2/07). The 360 acres of agriculture land converted annually from one agriculture use to another represents only 0.2 % of the total agriculture acreage in Hillsborough County. If the ¼ acre and less wetlands (291 Total) are evenly distributed across the agriculture parcels, only 4.1% of all agricultural properties have wetlands less than ¼ acre. These two factors together show that the potential impact to wetlands less than ¼ acre, without mitigation, would be very minimal. All impacts to wetlands greater than ¼ acre will be mitigated in the proposed rule.

Since the proposed rule links the reasonable use criteria to SWFWMD policies, the TAG Agriculture Committee recommends that the MOU between EPC and the SWFWMD address notification and involvement in policy changes.

Agriculture Use Time Frame:

Another issue is the time frame that the land must remain in agriculture and maintain the mitigation exemption. The TAG Agriculture Committee has reviewed options that rely on other wetland regulatory time frames and one that considers the time it may take a developer to get a non-agricultural project permitted. The options are as follows:

Wetland Regulatory Time Frames:

The use of an existing regulatory time frame may provide for a level of legitimacy or may validate the time frame based on concurrence with other agencies.

Environmental Resource Permit – 5 years		
Individual Water Use Permit – 6 years		
General and Small General Water Use Permit – 10 years		
UMAM Time Lag Values -	<u>Year</u>	<u>T-Factor</u>
	< or = 1	1
	2	1.03
	3	1.07
	4	1.10
	5	1.14
	6 – 10	1.25
	11 – 15	1.46

Mitigation Agreements – 5 Years
Wetland Delineations – 5 Years

Current Time Frame Rational:

The proposed rule currently sets the time frame at 7 years. This time period was determined to be longer than it would take a developer to fully permit a non-agricultural project subsequent to a impact to a wetland ¼ acre or less without mitigation under the agriculture exemption. This would decrease the incentive for a developer to attempt to use the agriculture mitigation exemption for a development project.

The reason for the time frame requirement is to ensure that only farmers are the beneficiaries of this exemption. A short time frame may encourage a farmer to fill wetlands prior to development or encourage a developer to seek the exemption under the guise of agriculture. A long time frame may adversely impact a farmer that can no longer remain in agriculture due to unforeseen circumstances. In addition, the requirement is to be documented in the public records, this may impact the market value of the land and

thus the farmer's borrowing capacity that they rely on for operational expenses from season to season.

The Agriculture Sub-Committee and the TAG did not reach a consensus on a need to change the time frame language in the proposed amendment. The TAG did recommend that a UMAM score be determined for wetlands that are to be impacted without mitigation prior to the impact so that if mitigation is required in the future, the criteria will be known.

Excavation and Filling Cumulative Impact:

The current rule is not clear if the fill and excavation impacts, within the reasonable use section, could be combined to allow a 1 acre impact. It was agreed that the rule should be revised to impose a ½ cap on the combination of these two.