

STRAWMAN DRAFT
TECHNICAL ADVISORY GROUP
PROCESS SUB-COMMITTEE
POSITION PAPER
(as developed by Dr. Scott Emery, Sub-committee Chair)
04/27/08

The following document is meant to be a Strawman. Sub-committee members are encouraged to add to, subtract from, dissent with, agree with any of the sentences contained herein. The Sub-committee members will note that I have left several "tasks" blank.....because I have no substantial notes that we have discussed these. If I am mistaken, please add information.

CHARGE

The charge to the Process Sub-committee covers many areas that are being described and explained in the Basis of Review and Applicant's Handbook. EPC staff is looking to the Process Sub-committee for input and guidance as EPC staff actually compose these new documents.

Specifically, the Process Sub-committee is to provide positions related to the following:

Delineations

Internal Consistency

EPC Review Process w/SWFWMD and FDEP (including timeframes and deadlines)

EPC Review Process w/PGMD (including timeframes and deadlines)

EPC Review Process w/Planning Commission (including timeframes and deadlines)

EPC Review Process w/Municipalities (including timeframes and deadlines)

Project prioritization

Fee Schedule

Development of Project Checklist

Setbacks

Definition/Description of "Reasonable Use"

DELINEATIONS and INTERNAL CONSISTENCY
(includes cross-training, MOU, State Wetland Line, ACOE process)

It is a consensus opinion of the Process Sub-committee that the process, criteria and methods used by EPC technical staff should be consistent with those used by the technical staff from SWFWMD and FDEP for the delineation of wetlands. It is the consensus opinion of the Process Sub-committee that a wetland line set by any of these agencies should be accepted by the other agencies. A wetland line set by EPC or SWFWMD or FDEP should be termed the "State Wetland Line".

To actualize this, EPC should work with SWFWMD and FDEP to cross-train wetland delineators. The goal of this cross-training is to build reciprocity and trust between the delineators. Once this cross-training is implemented, there would no longer be the need for more than one agency to be present for a given delineation exercise, unless a particular delineation involved a complex set of wetland types and configurations.

This is not meant to deter interactions between agency staffs. In fact, with cross-training, experiences of different delineators can be shared between agencies, resulting in more efficient and effective delineations. There may well be certain circumstance where a particular delineator within one of the agencies may have specialized experience that can be called upon by another delineator from another agency.

More specifically, it is the consensus opinion of this Process Sub-committee that there be developed a Memorandum of Understanding (MOU) between SWFWMD and EPC (with overtures made to FDEP) to ensure consistency of delineation efforts. This MOU should establish cross-training schedules and approaches.

The Sub-committee recognizes that there will still remain potential inconsistencies between the Corps of Engineers approach to wetland delineation as compared with the unified EPC/SWFWMD/FDEP approach. It is the understanding of the Sub-committee that the Corps is currently working with USEPA to modify and update its approach to wetlands delineations and classifications, but that this effort is not yet far enough along to be relied upon. Consequently, the Sub-committee recommends that EPC defer attempts to coordinate its approach with those of the Corps/USEPA until the Federal Government's internal efforts are farther along. At a future date, EPC (and SWFWMD and FDEP) should coordinate with the Corps/USEPA with the ultimate goal of being able to establish one method and approach for wetlands delineations. In the interim, it is the consensus opinion 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 or FDEP) may not be identical with one established by the Federal Government. It is also the consensus opinion 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.

The advantage to those seeking permits would be:

- Reduction in duplication of effort
- Greater ease of obtaining a delineation within a reasonable time frame
- Reduced chance of disagreement between delineators from different agencies
- More efficient use of public funds
- Clear, consistent (with SWFWMD and FDEP) approach taken in Applicant's Handbook

There were no dissenting opinions from the Sub-committee members on any of the above statements.

CURRENT EPC REVIEW PROCESS w/SWFWMD AND FDEP
(includes timeframes, deadlines, consistency)

The Process Sub-committee understands that EPC's duties as a local regulatory agency include the enforcement of their wetland and water quality rules, as well as review and commenting on multiple activities regulated under the County's Land Development Code and the Planning Commission's Comprehensive Planning duties. These latter duties are in contrast to the "single rule", stand alone, straightforward permitting responsibilities of SWFWMD (ERP rules, 40D-4 FAC; WUP rules, 40D-2 FAC) and FDEP (62-____ FAC). It is the Sub-committee's understanding that the EPC is also a commenting/review agency on these SWFWMD and FDEP rules. The Sub-committee understands that the County's permitting and Comprehensive Plan processes do not always coincide temporally with the ERP process or WUP process. To the extent that the information submitted under the County processes can be the same as submitted under the State processes, there will be a benefit to the Applicant.

Several members of the Sub-committee have indicated that the matter of "timeliness" of reviews by EPC has been a major point of contention with permit applicants.

For any EPC reviews that involve State (SWFWMD or FDEP) rules, it is the consensus of the Sub-committee that EPC should incorporate the state's time frames. Note, this requirement should be less onerous to EPC if the Sub-committee's recommendation regarding the MOU and cross-training are accepted and implemented. This opinion by the Sub-committee assumes that information provided by an applicant to SWFWMD or FDEP 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 understands that EPC does not have control over when they are sent the information by these other organizations. The Sub-committee therefore recommends that EPC enter into MOU-type agreements with these organizations which include the following:

- EPC commits to a timely review and comment within the time frames set by the outside organization's process provided that the outside agency provides the information to EPC within 48 hours of its receipt of said information.
- Should this information be provided to EPC more than 48 hours after receipt by the outside agency, the outside agency will so inform the Applicant, and will further inform the Applicant of a potential delay in the response from EPC.

Dissenting opinions?

EPC REVIEW/COMMENT PROCESS WITH PGMD
(includes rezoning, construction plans, land alterations/excavations)

The various types of reviews and comments provided by EPC to the County's PGMD, the Planning Commission, and the various municipalities were discussed at length by the Sub-committee. There is a difference of opinion between different Sub-committee members as to the extent to which EPC should be involved in different County and Planning Commission processes, as well as at what particular point in a process that EPC should get involved. Examples of "points of contention" include:

- EPC's repeated involvement at multiple points within the same process
- Lack of direction provided by EPC to the Applicant early on in the process

Certain Sub-committee members have suggested that EPC limit its involvement in reviews to those activities that specifically allow development to occur (that is, the point at which a wetland impact could occur). These Sub-committee members point to EPC's Chapter 1-11.01 (Intent), 1-11.07 (EPC Authorization), and 1-11.05 (Prohibited Pollution) to suggest that the Wetlands Rule gives EPC regulatory authority to prevent avoidable impacts before they occur. Such an approach would have EPC come in at the end of a process, once all technical information has been submitted.

Other Sub-committee members have indicated that such an approach would almost ensure additional frustration on the part of those who seek a permit to impact wetlands, in as much as the Applicant would have already spent many hours and significant monies within the PGMD process only to be (potentially) stopped at the very end by the EPC. For these Sub-committee members, a preferred approach would be for EPC to provide meaningful, reliable guidance to the Applicant at the very beginning of the process.

Currently, a pre-application meeting between EPC and an Applicant is optional and only occasionally used. Several Sub-committee members have indicated that this is due to the fact that the Applicant receives little useful information from EPC at this early stage, and that the Applicant has no assurance that if he/she follows EPC's guidance, they will stand a good chance of receiving a favorable review by the EPC. Several EPC staff provided information on what they normally do, and do not provide the Applicant at a pre-Application meeting. The Sub-committee's overall impression of the current pre-Application situation is that both sides "play their cards close their vests". Consequently, it is not surprising that the Applicant sometimes receives little useful guidance from EPC.

The Sub-committee explored the minimum amounts and type(s) of information that EPC might require in order to be able to provide the Applicant with MEANINGFUL comments very early on in the process. Specifically, what could EPC do if the Applicant simply sent EPC an aerial map that showed the boundaries of the property, BEFORE they began the process with PGMD? Certain members of the Sub-committee were of an opinion that EPC could take this information, examine its own set of detailed aerial maps of the site and the soil survey maps, and any other pieces of information it has regarding the wetlands on site. EPC could use these maps, plus any site-specific knowledge their staff might have, to develop preliminary estimates of where the wetland lines would likely fall, within a plus or minus of 20 feet in most cases. EPC could also examine where this property is in relation to other wetlands, any specially

designated types of habitats (for example Critical Upland Habitat). EPC could examine the spatial arrangement of the wetlands on site. Armed with this information, EPC should be able to meet with the Applicant, listen to what the Applicant desires to do on-site, and provide guidance and direction to the Applicant that the Applicant can rely upon throughout the entire process.

At this meeting, EPC would use the information it has compiled plus the information provided by the Applicant to provide the Applicant with a preliminary report that describes: (1) what uses would likely be easily permittable with respect to wetland issues; (2) what uses would potentially be permittable with innovative design and construction; (3) what uses would most likely be difficult to permit. EPC would base these good faith estimates on factors such as: (1) percentage of site that is wetlands; (2) location of the wetlands with respect to property configuration; (3) type/classification of the wetlands; (4) soils; (5) slope; (6) adjacent land uses; (7) special/unusual characteristics of on-site wetlands (if known); (8) location of any special designation lands or water bodies or wetlands adjacent to the site; (9) potential "choke points" created on the site due to the particular shape or location of the wetlands.

These could be in the form of rebuttable presumptions. The potential Applicant would have the option to challenge these presumptions by developing his/her own technical arguments. If the Applicant chooses to go with one of the easily permittable options, EPC's involvement through much of the development process could be minimal (although EPC should be willing to continue to advise the applicant through the design process) until final plans are available, at which time EPC would undertake a detailed examination, note deficiencies that need to be rectified, etc. In order for EPC to provide an engineering review, they must first have the detailed information. Consequently, the final EPC recommendations will need to wait until the final plans are available. However, so long as the Applicant remains on the general path developed in the original pre-Application meeting, recommended modifications by EPC would more likely be of a very specific nature (such as a specific elevation of an outlet).

The Sub-committee also suggested that, perhaps, early on, if the Applicant requests/prefers, EPC could make reasonable attempt to ground truth areas where the preliminary wetland estimate might be unclear from the aerals. If the site is less than ____ acres, EPC could make a reasonable effort to undertake a jurisdictional wetland survey prior to the meeting, upon such a request by the Applicant.

To summarize this item: There is no consensus among all Sub-committee members regarding EPC's involvement in the PGMD processes. One school of thought has EPC choosing to exercise its regulatory powers (or not) at the end of the PGMD process. Proponents of this school of thought suggest that EPC's rule gives EPC with the clear authority to prevent avoidable impacts to wetlands. Another school of thought within the Sub-committee believes that reliable, meaningful guidance to an Applicant from EPC early in the process has the greater potential to achieve a smoother, less expensive permitting process.

Other dissenting points?

EPC REVIEW/COMMENT PROCESS WITH PLANNING COMMISSION

In contrast to EPC reviews of Land Development Code issues, EPC reviews of Planning Commission items are normally not of the type that require detailed engineering, or hydrogeologic type information. Given this, at least some of the members of the Sub-committee are of the opinion that, for any reviews conducted by EPC for the Planning Commission, EPC should incorporate all Planning Commission time frames. This opinion by the Sub-committee assumes that information provided by an applicant to 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 understands that EPC does not have control over when they are sent the information by the Planning Commission. The Sub-committee therefore recommends that EPC enter into MOU-type agreement with the Planning Commission which includes the following:

- EPC commits to a timely review and comment within the time frames set by the Planning Commission's process provided that the Planning Commission provides the information to EPC within 48 hours of its receipt of said information.
- Should this information be provided to EPC more than 48 hours after receipt by the Planning Commission, the Commission will so inform the Applicant, and will further inform the Applicant of a potential delay in the response from EPC.

Dissenting comments?

EPC REVIEW/COMMENT PROCESS WITH MUNICIPALITIES

The Sub-committee has spent less time on this aspect of EPC's review and comment responsibilities. The types of projects for which EPC is requested to comment range from strict planning projects to construction and land alteration projects. Consequently, for some projects, EPC will require detailed plans and specifications while for others, EPC could conceivably provide meaningful comments early on in a process.

In similar fashion to the above-described EPC PROCESS WITH PGMD, the Process Sub-committee was split as to the best approach to take. For items of a planning nature, the Sub-committee is in general agreement that EPC reviews of items from any of the municipalities within the County should be conducted within the same time frames as set by the municipality. This opinion by the Sub-committee assumes that information provided by an applicant to a municipality 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 understands that EPC does not have control over when they are sent the information by these other organizations. The Sub-

committee therefore recommends that EPC enter into MOU-type agreements with these municipalities which include the following:

- EPC commits to a timely review and comment within the time frames set by the outside organization's process provided that the outside agency provides the information to EPC within 48 hours of its receipt of said information.
- The outside organization understands that the Applicant must submit all required information before EPC can be expected to undertake a timely review.
- Should this information be provided to EPC more than 48 hours after receipt by the outside agency, the outside agency will so inform the Applicant, and will further inform the Applicant of a potential delay in the response from EPC.

For items involving proposed actual construction/excavation, the Sub-committee has at least two sets of opinions (see PGMD above).

Additional Dissenting opinions?

PROJECT PRIORITIZATION

I have no recollection of significant Sub-committee discussions of this item.

FEE SCHEDULE

The Process Sub-committee examined the current fee schedule employed by EPC. One Sub-committee member was able to divide the various fees into fees that can easily be related to potential impacts to wetlands. These include: Subdivision Construction Plans; Site Development Construction Plans; Minor Site Development Reviews; Natural Resources (Waiver, LUHO, Other); Land Excavation Review and Processing; Land Excavation Permit Amendments; Fee for Additional Acreage; Fee for Time Extension or Renewal; Phosphate Process Reviews – 4 factors.

The same Sub-committee member also itemized various fees associated with EPC reviews of: Rezoning; Site Plan District PD Rezoning; Wetland Setback – Zoning Variance; Special use Applications; DRI Process (3); DRI Annual Report Reviews; Areawide DRIs; Substantial Deviations (3); Incremental DRI Reviews (3); Florida Quality Developments; Subdivision Processes (4); Site Development Processes; land Alteration

Process; Phosphate Process. This same member questioned the validity of the second list of fees.

The Process Sub-committee has not discussed these various fees in detail, nor developed opinions on each.

At least one Sub-committee member would like an explanation of the rationale for this extensive list of fees.

PROJECT CHECKLIST

I have no recollection of significant Sub-committee discussions of this item.

SET BACKS

I have no recollection of significant Sub-committee discussions of this item.

DEFINITION/DESCRIPTION OF REASONABLE USE

I am unable to find the posted document on the EPC Website. I was going to simply add the posted description and solicit comments.

End Chair's attempts at a strawman as of 04/27/08