

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”

Basis of Review	Applicant’s Handbook	PGMD/Muni.	WMD
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 Eval	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.

DELINEATIONS:

As agreed in the 11/17/07 meeting, reciprocity and trust between agencies concerning wetland delineations should be the norm. The committee suggests that wetland hydroperiod determinations are also added to this recommendation. 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. This master MOU will undoubtedly included other topic areas. The committee suggests adding hydroperiod

(SHW/NP/P50) information as the SWFWMD does not currently recognize EPC determinations of these values.

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. 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 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/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/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 (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. All municipalities within EPC jurisdiction should establish a process by which EPC could be equitably involved in review of 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)

Scott Emery was to write this portion, including some statement to the effect of “provided EPC has the technical expertise available to perform the activity”.

FEES:

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: ???

Con: If no data is kept, how can fees be justified?

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 authorizing an impact to a wetland:

4	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 to all Natural Resource Other projects)	\$270 (Assuming this applies
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 assumptions 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 cannot be justified, and may change.

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.

(See Chucks List – Zonings – DRI's, Preliminary Plans, Plats, etc.)

It has been suggested by EPC staff that these reviews are necessary to "steer" applications 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 the following “default” Zoning approval letter)

“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.
- 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.

Many examples of the non-binding, non-reliant type comments are evident in the above document, as well as those received for other reviews in addition to those specifically pointed out.

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 be occurring.

The committee recommends that fees for the aforementioned reviews should not be mandatory for any of the reviews (as no developmental approval is provided and the information provided is non-binding, non-reliant). The committee suggests that if EPC is to demand a fee for a particular review, the information returned should consist of meaningful, rebuttable presumptions, which, if adhered to can be relied upon by the applicant for use in obtaining approval (i.e. reasonable use, justification and minimization arguments, etc.) An applicant should have a reasonable expectation that the information

provided in response to an EPC review can be “taken to the bank”. The committee also recommends that a conceptual permit be created whereby an applicant could request a more detailed review in the earlier stages and obtain/receive binding and reliant information from EPC.

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 cannot be justified, and may change.

Setbacks:

Discussion of setbacks has been limited to the approved minutes of the 1/18/08 meeting whereby the Committee indicated that Natural Resources should NOT be requesting EPC's review of activities within Setbacks. *(This subject was tabled pending information provided by Bob Stetler for discussion May 12, 2008. I would also point committee members to the last “Emphasis Added” portion of the standard EPC Zoning Approval Letter above whereby EPC is asserting a right to provide specific recommendation)*

Pro:

Con:

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 substituting the word future for the words “reasonably foreseeable in the definition under part (1). The committee also recommends the addition of l.) a Future Land use component and m) a Net Environmental Benefit Component. *This is intended to be discussed at the May 12th meeting.*

Pro: A reasonable ☺ start.

Con: The committee has raised concerns as to the methods to be used for determining self imposed restrictions, how to document minimization efforts, etc. List may need to grow as time goes on.

Review Criteria:

This issue has not been brought before the committee for discussion.

Summary: