Technical Advisory Group
Position Paper

Subject: Mitigation Process

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Summary: The EPC mitigation process is described in Rule 1-11.08 (insert rule text). The minimum requirement for wetland mitigation is: ["6. (p. 4) insert digital text to be provided by EPC]. Currently, mitigation is considered only after avoidance and minimization of wetland impacts have been determined infeasible.

Issue: To evaluate the current mitigation process and discuss possible changes to streamline the program while keeping the integrity of wetlands protection.

- List and provide examples of other mitigation processes used by Federal, State or other local agencies that could serve as a model.

  Federal:
  1. The U. S. Army Corps of Engineers and Environmental Protection Agency implement the 404(b)(1) guidelines but a new rule will be effective in July 2008: see 33 CFR Parts 325 and 332 and 40CFR Part 230. These rules provide compensatory mitigation for losses of aquatic resources.
  2. The USFWS has a 'Mitigation Policy' specifying a hierarchical approach to mitigation.

  State:
  1. The Florida Department of Environmental Protection implements the state Environmental Resource Permit (ERP) process.
  2. The water management districts implement UMAM and or the FDEP ERP process; use of and implementation of UMAM varies among water management districts.

  EPC:
  1. The only mitigation bank in Hillsborough County is evaluated using WRAP not UMAM because that was the evaluation tool used to permit it; WRAP applies for FDEP and EPC's 1:1 mitigation ratio in place at the time of the bank permit issuance.

  External:
  1. Review exemplary mitigation scenarios reported from conferences and literature.

- What are the positive aspects of the current Mitigation Process?
  1. The current mitigation process provides protection of isolated (< 0.5 acre) systems, except for Agricultural Rule exemptions.
  2. Each proposed impact area is reviewed individually regardless of size.
  3. The mitigation policy is used sequentially following a review to achieve avoidance and minimization of wetland impacts.
  4. UMAM allows for non type-for-type options.

  <u>Recommendations:</u>
  1. Keep the avoidance and minimization process as the first step and the jurisdiction (protection) of isolated less than 0.5-acre systems.

2. UMAM scores should be coordinated between EPC and the Southwest Florida Water Management District.

- What are the negative aspects of the current Mitigation Process?
  1. See the Mitigation Banking paper.
  2. Based on the current UMAM approach, the existing process provides limited flexibility, and there is no provision for consideration of non type-for-type (i.e., like for like) options.
  3. Too much time is spent on very small, negligible, and truly unavoidable impacts and mitigation requirements are commensurately too much in actual expense vs. environmental loss abatement.
  4. The process should concentrate on impacts to higher quality systems (Dissenting opinion: the process should concentrate on satisfactory evaluation of constraints and opportunities on each site).
  5. Destruction of native upland habitat with good ecological integrity should not be used to mitigate for minor impacts or impacts to poor quality wetlands.
  6. The process should use scientifically-based restoration science and should incorporate known life history requirements of wildlife species targeted for management or likely to use the habitat.
  7. EPC could reject a design by a wetland profesional or applicant for technical feasibility when the plan is technically feasible – need to have experienced technical review and qualified QAQC of reviewer decisions.
  8. EPC should strive to have a consistent definition of restoration and enhancement with federal and state agencies and peer-reviewed scientific publications.
  9. EPC should avoid flawed science and focus on incorporating known life history requirements of wildlife species to be managed in association with a wetland.
  10. EPC should evaluate the invasive exotic and nuisance plant lists and avoid giving disproportionate credit for the removal of invasive exotic plant species (e.g., Brazilian pepper or melaleuca) when those species are also providing habitat for wildlife species (e.g., box or softshell turtle territories under Brazilian pepper or colonial waterbird nesting in Brazilian pepper; colonial waterbird (wood storks, white ibis, roseate spoonbills, etc.) dropping into melaleuca forested wetlands to forage (see recent minutes of the Wood Stork Working Group).

- How could these negative attributes be addressed?
  1. See above recommendations.
  2. The rule could be changed to provide more flexibility for the reviewer; when obviously beneficial for the environment.
  3. Use leading restoration models and sound wildlife science.

- How could the current mitigation process be improved?
  - Quality Control
    1. Automatic denials for incomplete submittal? Applicants should be sent a letter/email (applicant preference) notifying them that their submittal is incomplete and they have (# to be determined – suggestion: 30 days consistent with water management district time frames) to supplement the application and make it 'complete'. Providing a 'grace period' to complete incomplete submittals would enhance the perception of 'fairness' of the EPC application process.
    2. Application checklist? The current "form" is perceived to be difficult and we recommend that it be replaced with an 'application checklist' similar to the wetlands jurisdictional delineation request form.
    3. Inconsistency between engineering plans and consultant plans? The consulting team should be responsible for submitting one set of signed and sealed plans for review. In additon to

sign-offs by a licensed professional engineer 'P.E.', EPC should consider requiring biological plans to be signed by an appropriately credentialed professional (these would include wetlands jurisdictional delineations: Professional Wetland Scientist 'PWS' (Society of Wetland Scientists); mitigation plans: PWS or Certified Wildlife Biologist 'CWB' (The Wildlife Society), or 'Certified Senior Ecologist' (Ecological Society of America). In some cases, complementary professional certifications such as a certified 'Professional Geologist', 'Certified Professional Soil Scientist' (Soil Science Society of America), or 'Certified Fisheries Scientist' (American Fisheries Society), or similar certifications by accredited professional societies, or credentialing through academic appointment, or superlative education and professional experience, may be appropriate. Such certifications would enhance the quality of submittals.

- Mitigation Committee meeting process.
    1. See the Process Committee and Classification Committee recommendations.
    2. We recommend that EPC establish a collaborative process directed towards introducing relevant site opportunities and constraints as early as possible in the process. The process should emphasize communication, information exchange, and technical accuracy.
    3. Develop guidelines for when the process is needed vs. a streamlined process (e.g., staff level review vs. invoking the full committee).
    4. Eliminate the applicant 'stepping out of the meeting' while the permit decision is being made regarding the project; the meetings should be collegial and closed door discussions should be avoided. If there is broad disagreement among EPC staff and a permit decision cannot be rendered the same day, the EPC staff should identify during the meeting the regulatory or design questions at issue; and identify additional information that may be needed to allow them to make a decision pending receipt of it. Applicants typically attend meetings with various technical and legal representatives present at substantial cost. Such investments in time and technical expertise should be mutually respected and every opportunity should be taken to identify any technical or legal questions and resolve them during the meeting. Comprehensive meeting notes should be taken during the meeting and provided to all participants similar to the Southwest Florida Water Management District process.

Should there be a new application? Yes, that would help.

- Provide suggested language
    1. Develop a checklist and application form similar to the wetlands jurisdictional delineation checklist as a guided planning tool.

- What would be the Basis of Review for a mitigation project from start to finish?
    - Provide suggested language.
        1. Refer to suggested checklist.
        2. Reference publications on designing mitigation projects and require participation of qualified or certified professional scientists.

- What are the positive and negative attributes of "Enhanced Mitigation"?
    1. Con: Negates 'Reasonable Use' argument.
    2. Pro: Net benefits could override impacts.

- Should the quality of a wetland be justification to impact it?

1. The "quality" of a wetland is a two-edged sword – it represents a basis from which to determine mitigation options. Quality can be a commentary on surrounding land management if a wetland has become degraded. Quality presents both constraints and opportunities for protection, enhancement or restoration of a degraded wetland after avoidance and minimization have been addressed. Quality, future potential integrity within the watershed, and the likelihood that mitigation can be provided to offset impacts may drive site evaluation decisions.
2. UMAM score should not be a justification to impact; neither should a classification system.
3. Wetlands should be evaluated as systems; most 'degraded' wetlands can be improved, and 'degradation' is a short-sighted perspective on wetland functioning. When wetlands are 'degraded', regulatory agencies should look more assertively for the cause(s) of the degradation throughout the relevant area and implement landscape level changes.

Other comments, questions or concerns:

1. Stop wasting EPC and applicant's time on looking at ditches in the field.
2. Dissenting opinion: Since many ditches are surrogates for formerly existing natural creeks, or shortened conveyances between remaining sections of a natural creek, we propose that the EPC design criteria should be modified so that ditches more closely emulate natural creek configurations; redesigning ditches would slow flow transit times, and increase on site retention to hold water for recharge and filtration. For ditches cut on uplands, they still produce a suite of wetlands functions and values, and in many cases are surrogates for natural streams that have been encased or altered. Unresolved issues are their importance for resident, foraging and nesting wildlife (turtles, birds, fishes, macroinvertebrates, etc.) and the management and timing of maintenance of native and nuisance or invasive plant species.