



Protecting Southwest Florida's unique natural environment and quality of life ... now and forever.

July 16, 2014

John Humphreys
Submerged Lands & Environmental Resources Coordination
Florida Department of Environmental Protection
Email: john.humphreys@dep.state.fl.us
Office: (850) 245-8487

RE: Uniform Mitigation and Assessment Method Worksheet Drafts

Dear Mr. Humphreys,

The Conservancy of Southwest Florida, on behalf of our more than 4,500 members in Collier, Lee, Hendry, Glades and Charlotte counties, submits the following comments regarding the Florida Department of Environmental Protection's (FDEP) draft Uniform Mitigation and Assessment Method (UMAM) worksheets. The Conservancy is also providing comments on the overall rule development effort and ways in which the rule can be improved to better prevent wetland losses, in addition to the worksheet goals of improving the clarity, accuracy and dependability of the assessment method itself. This rulemaking effort should address the continued loss of wetland acreage and function throughout Florida in order to create a tool which accurately and consistently mitigates for wetland impacts.

Ongoing Wetland Losses in Acreage and Function

The drainage and filling of wetlands is an ongoing critical issue in southwest Florida. Despite the federal "no net loss" policy for wetland mitigation, Collier and Lee County alone lost over 900 acres of wetlands per year in the early 2000s in addition to the historical losses before the no net loss policy was implemented. The significant wetland losses and associated changes in hydrology through residential and commercial development, agriculture, and canal construction have resulted in vastly altered landscapes and degradation to water quality and supply, as well as native and listed species habitat. Drawdown on the water table through hydrologic changes has also impacted the remaining wetlands health and the biota which depend on them – including many wading birds which are adapted to the wet and dry seasonality of southwest Florida wetlands.

The ephemeral, short-hydroperiod wetland losses have outpaced the impacts to the deeper wetlands in this region, simply due to the fact that seasonal wetlands are easier to drain, fill and develop when they are dry for a portion of the year. Unfortunately, the mitigation to replace the short-hydroperiod wetlands functions has not kept pace with the losses and has resulted in those functions being inordinately reduced. This appears to be attributable to the current lack



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of specific function identification and tracking in the UMAM process, as well as the allowance of mitigation for wetlands impacts in uplands through exotics removal and upland restoration.

In order to address these deficiencies in the upcoming UMAM rulemaking process, the Conservancy recommends the following steps be pursued:

Type for type mitigation:

There needs to be mechanism to accurately track and mitigate for the types of wetlands being impacted in any given Assessment Area (AA). For example, short-hydroperiod wetland acreage and function impacts need to be offset by creation or restoration of a commensurate amount of short-hydroperiod wetlands. This can be achieved through a tracking tool which identifies functional groups of wetlands based on hydroperiod and Florida Land Use and Cover Classification System (FLUCCS) code, as well as vegetation cover.

Upland preservation and restoration/exotics removal not appropriate compensatory mitigation for wetland impacts:

Direct impacts to wetlands should not be mitigated on upland habitats through preservation, restoration or exotics removal or through simply enhancement activities in existing wetlands. While uplands are important components of the overall mosaic of habitats in southwest Florida, restoring uplands in exchange for wetland impacts contributes to the total decline in wetland acreage and function. There are instances however when secondary impacts could be mitigated with unique rare upland communities like scrub; however, these would be unusual cases and allowing uplands to be used as mitigation should only be for secondary impacts and limited to these very exceptional situations on a case-by-case basis. Direct impacts should be mitigated using restoration or creation of the specific wetland type based on current FLUCCS and historic pre-development vegetation coverage to satisfy UMAM.

Existing Condition vs. Pre-development Type Reference Community for Impact Assessment:

For UMAM assessment purposes, impacted wetlands degraded due to altered hydrology or exotic infestation should be assessed by comparing the current maximum wetland functions against a reference community based on the wetland type it most closely resembles now from a functional standpoint. This ensures the wetlands functional value is emphasized and properly captured in the scoring process.

Specific Comments on Worksheets

Regional scarcity tool should be included:

Part 1 – Site Information and Reference Condition of the UMAM worksheet includes a component that identifies the statewide scarcity of the natural community being impacted in the AA. However, this may not accurately capture the rarity of certain natural communities in any given region, such as southwest Florida. Due to the disproportionately high rate of declines in short-hydroperiod wetlands such as wet prairies, the ratio of short to long hydroperiod wetlands is drastically changed from historic pre-development natural communities. Therefore, ecological regions which exhibit different rarity patterns from that of the entire state should be

included in this section of the UMAM. If the regional rarity status is not “apparently secure”, there should be a weighting factor applied which would provide a greater lift in either restoration or creation mitigation activities.

Location and Landscape Support:

Questions 3 and 4 of LLS deal with the AA’s proximity to Significant Habitat, as well as the approximate acreage of the Significant Habitat in question. The areas include Wildlife Management Areas, mitigation banks, national forests, or other conservation areas. It is unclear whether this is intended to apply to properties with private conservation easements. While many conservation easements are in fact managed to maintain predominantly natural communities and are intended to remain under perpetual legal protection, those caveats will be largely dependent on the individual conservation easement’s requirements and would require the applicant and/or reviewer to identify the necessary documentation and confirm the terms of the conservation easement.

Water Environment:

- Minor note on consistency – in some instances “Assessment Area” is capitalized, and in others it is not.

In terms of assessing water quality, the WE section relies entirely on observable signs of degradation, in addition to the 40% of the score arising from questions 1 and 2 of LLS by assessing the relative contribution of the surrounding landscape to the surface waters condition. One important factor which has not been taken into account is whether or not the AA is located within a watershed which is considered impaired per section 303(d) of the Clean Water Act (CWA) and included on FDEP’s or the Environmental Protection Agency’s (EPA) 303(d) lists. The status of any given AA can be identified during the office portion of the UMAM process by consulting FDEP’s Waterbody Identification Number (WBID) Verified Impaired Geographic Information Systems (GIS) shapefile and locating the AA within the correct WBID. Some forms of water quality degradation would not be readily apparent from field observation, and utilizing the impaired waters lists would allow a greater level of detail in understanding the types of pollution impacts to the AA, in conjunction with surrounding land use types and estimated runoff from adjacent lands. Therefore, the Conservancy recommends including the impaired waters status as a criteria for evaluation and assessment in the WE section.

Possible draft wording for a question addressing this point:

“The Assessment Area is located within a watershed currently identified as impaired for one or more pollutants per the state or federal 303(d) list, or has a Total Maximum Daily Load (TMDL) in place.”

Since the answer would be yes or no regardless of the “with project” condition, this could perhaps be included as a small weighting factor modifying the final WE score.

Conclusion

The Conservancy of Southwest Florida appreciates FDEP's consideration of our preliminary comments on UMAM and the draft worksheets. We look forward to working with FDEP as the rule development progresses. Please do not hesitate to contact us should you have any questions or wish to discuss further.

Sincerely,

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