Amendments to the Wetland Land Development Regulations were adopted by the Martin County Board of County Commissioners on December 13, 2011. A concern was raised about the addition of the word “delineated” in that Land Development Regulation as a modifier to “wetland” (as in “delineated wetlands”). The concern is that the addition of the term “delineated” will exclude non-delineated wetlands from the County’s wetland protection regulations.

This memorandum is in response to that concern.

Wetland protection is a primary focus of our Comprehensive Plan. The provisions in the Plan are extensive, thorough and enforceable. They are also in compliance with all state statutory comprehensive planning requirements.

In addition to the Comprehensive Plan, Martin County has adopted Land Development Regulations, pursuant to Section 163.3202, Florida Statutes, regarding wetlands. Those regulations are consistent with the Comprehensive Plan.

For the purpose of regulating land use by government agencies in Florida, an “area” of land becomes a “wetland” upon “delineation” (Sections 373.019(2), 373.421 and 373.4211, Florida Statutes). That definition and the requirement for delineation were established in 1994 because multiple levels of government in Florida had different definitions for “wetland” and the resulting confusion and expense, especially for landowners, led the State to adopt a statewide standard that preempted all other state, county and municipal definitions. (Please note that the U.S. Army Corps of Engineers also regulates wetland impacts based on its own definition of wetlands and based on different criteria for allowed impacts and mitigation.)

Under the statewide definition, an “area” is determined by a biologist to be a “wetland” based on the vegetation, soils and hydrology of the area. While many persons are able to recognize a mangrove swamp or cypress dome as a wetland, all wetlands are not self-evident. Certainly, there are many “areas” that biologists agree are wetlands, and just as certainly there are also “areas” where biologists differ, even when applying the statutory definition.

Depending on the circumstances, delineations in Martin County are performed by either a South Florida Water Management District or Florida Department of Environmental Protection biologist. Those biologists inspect a parcel of land and locate the wetland areas through staking, surveying, GPS or other means. Those locations are then placed on a map of the parcel and that map is then used for the review of site plans by various
government agencies, including the County, for that parcel. In the event the owner of the parcel disputes the delineation, administrative and judicial procedures are available to resolve such disputes.

In Martin County, no impacts are allowed to wetlands except for exempted uses such as access, public utilities, boardwalks, docks, boat ramps, bridges and storm water treatment projects. Impacts are also allowed when the wetland regulations preclude reasonable use of a parcel of land (Policy 9.1G.7, Martin County Comprehensive Plan). Where impacts are permitted, mitigation is generally required by Martin County and the other permitting agencies.

In situations where a parcel of land may not have had its wetlands delineated and the landowner may have impacted a wetland in violation of State or County regulations, then “the most reliable available information shall be used with reasonable scientific judgment” by the regulatory agencies to delineate the wetlands, if any, on the parcel. That information may include such things as vegetation, topography and even aerial photography (section 62-340.300 F.A.C.). Such a delineation is a legal prerequisite for enforcement.

To assist in the delineation process, Martin County has created a composite wetland map based on several data sources including 1981 soils data, 1985 National Wetlands Inventory, satellite imagery and field data. However, the Comprehensive Plan (Policy 9.1G.2) also recognizes that: “The composite map is a useful guide to locate wetlands, but Florida Statutes section 373.421(1) requires delineation of wetland boundaries in the field according to Florida's unified wetlands delineation methodology. The methodology will determine the final jurisdictional location and extent of wetlands. As field and satellite data become available, they will be used periodically to update the composite map, ensuring it reflects the most date current, digitally derived wetland coverage.” (Emphasis added.)

Conclusion: Since all county regulation of wetlands depends on the official delineation of the “jurisdictional location and extent” of those wetlands, the addition of the term “delineated” to the Land Development Regulations creates no limitation on the County’s ability to enforce the County’s Comprehensive Plan and Land Development Regulation wetland protections in the same manner as prior to December 13, 2011.

SF/sfl

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