Florida's Programmatic Approach to Mitigation: Section 373.4137, Florida Statutes (F.S.) requiring mitigation for Transportation Projects

SHRP-2 Eco-Logical Mitigation Peer Exchange
March 2015
Outline

• Florida Statute
• Section 373 – Water Resources, Florida Statutes (FS)
• Implementation
• Planning phase – Mitigation opportunities
• Project Development & Environment phase – Coordination/consultation
• NEPA – Conceptual mitigation
• Design – Final mitigation, Permitting
• Construction - Compliance
Chapter 373, F.S., Water Resources

- Part I – State Water Resource Plan
- Part II – Permitting of Consumptive Uses of Water
- Part III – Regulation of Wells
- Part IV – Management and Storage of Surface Waters
- Part V – Finance and Taxation
- Part VI – Miscellaneous Provisions
- Part VII – Water Supply Policy, Planning, Production, and Funding
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• Includes:
  – Additional Criteria for Activities in Surface Waters (s. 373.414)
  – Statewide Environmental Resource Permit (s. 373.4131)
  – Requirements of mitigation banks (s. 373.4135)
  – Establishment and operation of mitigation banks (bank instrument permits) (s. 373.4136)
  – Mitigation requirements for specified transportation projects (s. 373.4137)
373.4137 – Mitigation requirements for specified transportation projects

- Codified in 1996
- Regional approach to mitigation rather than postage stamp
- FDOT must mitigate for project impacts to wetlands by funding Florida Department of Environmental Protection (FDEP) and 5 Water Management Districts (WMDs) implemented mitigation
- Mitigation based on impact acres not wetland function
- Mitigation developed for 3 years of the FDOT Work Program – Project Inventory
- WMDs develop annual mitigation plans
- Only mitigation option available is WMDs
- WMD driven process
Florida’s Water Management Districts

Northwest Florida WMD

Suwannee River WMD

Southwest Florida WMD

St. John’s River WMD

South Florida WMD

All semi-autonomous working under the (FDEP)
Florida’s State Permitted Mitigation Banks

Mitigation Banks by Water Management District, and Service Area Coverage

DEP Mitigation Banks in Red

Florida Department of Transportation
Working Together
Public/Private Partnership

- Challenges to statutory approach raised by 2008 Wetland Mitigation Rule
- FDOT coordinated an approach with FDEP, WMDs and Mitigation Bankers to make statute current
- Clear, concise and consistent statewide application by all parties
- Open communication and coordination to ensure smooth development implementation of amendment
- Agency liaisons stay on project throughout the process
- Fully accountable process with defined milestones
- Proposed Corps “Regional General Permit” for streamlined permitting process
- Draft being finalized by Corps, public notice thereafter
New s. 373.4137

- Enrolled May 2014, effective July 1, 2014
- FDOT can use any mitigation option meeting state and federal requirements
- Mitigation based on resulting functional loss
- Florida’s Uniform Mitigation Assessment Method (UMAM) [ss. 373.414(18)] described in Florida Administrative Code, Rule Chapter 62-345
- Functional loss = credits
- Advance mitigation through mitigation banks
- Coordinated process – FDEP, WMDs, mitigation banks and Army Corps
- FDOT leads process
- Implementation of principles (procedurally) was occurring while amendment to statute was being drafted
Implementation: Planning phase

- Coordination with FDEP and WMDs at management level
- Redrafting of interagency agreements
- Jurisdiction specific
- Action specific
- Rewriting screening approach
- Value to agency commentary
- Identification of wetland mitigation opportunities
- Advanced mitigation
- Conservation planning
- Integrated mitigation
Planning Phase

- MPO/TPO (26 going on 27!)
- Statute ensures wetland mitigation is considered and funded (TIPs) during plan development
- FDOT and transportation authority projects are covered specifically
- Project specifics are addressed through screening process
State Project Development Project/NEPA

- Screening information used to develop project scope
- Identified opportunities for mitigation are carried forward
- Initial functional assessment (UMAM) to determine amount of mitigation projected
- Coordination with agencies to refine mitigation options – commitments?
- Potential for advance mitigation credit purchase from banks
- Agreement from agencies with Army Corps, WMDs, USFWS, NMFS...
Regional General Permit SAJ-92

- For screened projects and those that completed state project development process or NEPA
- 5 acres of both direct and secondary impacts per mile of project length
- Linear transportation projects
- Mitigation completed via s. 373.4137
- Exclusions
  - Tidal waters (all of Monroe County)
  - New alignments
- Jeopardy opinions under ESA
Design and Permitting

• Final functional assessment performed
• Jurisdictional determinations
• Final mitigation identified
• If mitigation bank, FDOT purchases
• Permit coordination with same representatives that have been looking at the project since planning phase
Summary

• Coordinated approach
• Public/Private Partnership
• Supported by state law
• Leverages and improves existing FDOT processes
• Integrates federal requirements
• Expedites project delivery
Where are we headed?

• Amended statute effective July 1, 2014
• RGP is in final stages and should be effective soon
• Currently beginning discussions regarding programmatic approaches to species and habitat
• USFWS, Florida Fish and Wildlife Conservation Commission, FAMB and various NGOs
• Modification of FDOT SOPs
• Looking at species specific Programmatic Agreements
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