

Florida's Uniform Mitigation Assessment Method
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The Environmental Resource Permit (ERP) and Wetland Resource Permit (WRP) programs administered by the Florida Department of Environmental Protection (FDEP) and Water Management Districts (WMD) attempt to avoid or minimize adverse impacts to wetlands and surface waters when land is developed. Where adverse impacts are unavoidable, these permit programs provide applicants with the option to mitigate, i.e., to restore, enhance, or preserve comparable habitats to offset those impacts. One question that arises is what amount of mitigation is necessary to adequately offset adverse impacts.

To provide a consistent process for determining the amount of mitigation needed to offset adverse impacts, the Florida Legislature in 2000 and in 2002 enacted legislation directing the FDEP and the four WMDs responsible for implementing the ERP program to develop a single uniform wetlands mitigation assessment method for wetlands and other surface waters. §373.414(18), Fla. Stat. The uniform mitigation assessment method will “establish a consistent process of assessing wetlands and other surface waters to determine the amount of mitigation necessary to offset impacts to those wetlands and surface waters.”
<http://www.dep.state.fl.us/water/wetlands/mitigation/uwmam.htm>.

The Legislature authorized FDEP to adopt a rule providing an “exclusive and consistent process for determining the amount of mitigation required to offset impacts to wetlands and other surface waters.” S. 373.414(18), Fla. Stat. Upon adoption, the new mitigation rule would become binding on FDEP, the WMDs, local governments, and government agencies as the “sole means to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits.” *Id.* The Legislature provided that application of the new rule would not be subject to the Bert J. Harris, Jr., Private Property Rights Protection Act (s. 70.01 *et seq.*, Fla. Stat.). *Id.* Thus, no relief exists under the Bert Harris Act for property owners who believe their real property is inordinately burdened by the new mitigation rule.

FDEP in February 2004 adopted the “Uniform Mitigation Assessment Method (UMAM).” F.A.C. Ch. 62-345. The UMAM provides a “standardized procedure for assessing the functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss.” F.A.C. r. 62-345.100(2). The UMAM will be used to “quantify the acreage of mitigation or the number of credits from a mitigation bank required to offset the impact.” *Id.*

The UMAM will be used in “any type of impact site or mitigation site in any geographic region of the state.” F.A.C. r. 62-345.300(3). To determine the value of functions provided by impact and mitigation sites, the UMAM incorporates the following

considerations: current condition; hydrologic connection; uniqueness; location; fish and wildlife utilization; time lag; and mitigation risk. F.A.C. r. 62-345.300(2).

Locally, the Hillsborough County Environmental Protection Commission (EPC), in July 2004 adopted amendments to its wetlands rule to incorporate FDEP UMAM sections 62-345.200 through 62-345.900 in their entirety. Rules of the EPC of Hillsborough County, Fla. r. 1-11.08 (July 2004). The EPC will apply the UMAM to wetland development applications to “determine the amount of mitigation needed to offset adverse impacts to wetlands,” to “award and deduct mitigation bank credits,” and to “determine the required mitigation for secondary impacts.” Id.