



February 4, 2011

Mac Hatcher  
Collier County Stormwater Management  
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Naples, FL 34104

1450 Merrihue Drive  
Naples, Florida 34102

239.262.0304

RE: Collier County Watershed Management Plan Development

Fax 239.262.0672

Dear Mr. Hatcher:

[www.conservancy.org](http://www.conservancy.org)

As one of the key organizations involved in securing funding for the development of the Collier County Watershed Management Plans (WMP), the Conservancy of Southwest Florida continues to actively monitor the progress on these plans to ensure that funding is being used to produce effective plans which protect our County's water resources. The Conservancy sincerely appreciates the County's effort to hold public meetings and address some of our previous comments on these plans. There are still aspects of the current watershed management planning effort that the Conservancy is concerned could undermine the effectiveness of the resulting plans. This is further explained in our comments below.

#### DEVELOPING DETAILED PLANS AND POLICIES

The progress made on Collier County's Watershed Management Plans to date includes completing or initiating the following tasks:

1. Assessment of existing conditions of the watersheds
2. Assessment of existing conditions of the estuaries
3. Development of performance measures
4. Analysis of alternatives and recommendations
5. Public involvement/ public meetings

However, the two most important tasks have yet to be started:

6. Watershed Management Plan reports
7. Project management and meetings

With only a few short months left, detailed plans and policies need to be developed and released immediately for public review and comment. The Conservancy encourages the County to consider implementing policies that address low impact development, non-structural stormwater treatment, fertilizer ordinance implementation, impervious cover and transfer of development rights programs. The 2011 WMPs will need to implement more stringent standards for future development and retrofitting/ restoration options for older developments. We would like to see the County take a proactive approach to land

use planning, so that expensive retrofitting is not necessary in the future. We also suggest that the Watershed Management Plans be incorporated into other planning efforts such as the County's Master Mobility Plan, Evaluation and Appraisal Report Amendments and the Golden Gate Estates Area Master Plan.

#### REFOCUSING ON HOW TO ADDRESS OUR WATER QUALITY PROBLEMS

The Conservancy of Southwest Florida has met with County staff and the consulting firm PBS&J to discuss the content of the Watershed Management Plan technical memos. It is our understanding that the intent of these memos was to assess current watershed data and impairment classification to develop management plans. Originally, many of these memos critiqued FDEP data, attributed impairment classifications to natural causes without scientific evidence and prematurely suggested the development of site specific alternative criteria (SSAC).

The Conservancy requested that the County require PBS&J to revise these memos to remove any speculative statements, and we appreciate the County and consultant's effort to do so. Several memos were not revised, and were instead removed from the County's website. The Conservancy appreciates the responsiveness to concerns raised; however, is unsure of the status of these memos. Therefore, we request written confirmation that these memos have been permanently removed from the record, and will not resurface to cause conflict with the content of the revised documents. In the case that these memos were taken off the website but would remain part of the record or utilized in any future fashion, we have the following comments:

##### 1. Inconsistency with the Watershed Management Plan (WMP) intent

The Conservancy strongly believes that the original intent of the Watershed Management Planning process was not to explore avenues to potentially challenge current water quality assessments (state and federally approved listing status determinations or Total Maximum Daily Load pollutant limits). The Conservancy advocated prior to the initiation of the plan development process that the number one priority was for these plans to address how to meet existing state water quality standards. We believe that the funding should have been used to develop management plans that aimed to bring the County's impaired waterbodies back into compliance – thus restoring them to the quality generally recognized as necessary for protecting public and environmental safety.

Instead, in the "Element 4 Task 1: Review of IWR Data" memorandum, the County's consultant writes:

"PBS&J completed a review of available data within the Impaired Waters Rules (IWR) database to validate the impairment classifications."

While this was under the general task of "assessing available data"<sup>1</sup>, instead of compiling and relying on the existing data and state and federal determinations of existing

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<sup>1</sup> Collier County Growth Management Plan, Conservation and Coastal Management Element Goal 2 Objective 2.1

conditions, considerable time and money was spent to reanalyze prior assessments and data analyses. Unfortunately, it is too late to redirect such resources now, but it should be noted that such an investment was not consistent with the original WMP intent and we are concerned now has left insufficient time and money to adequately address the core functions of the WMP process.

## 2. Lack of Scientific Support

Another concern that we have is with the commentary statements or recommendations throughout the technical memos that are not accompanied by supporting scientific data. Such a memo is the "Element 4 Task 1: Review of IWR Data" memo, which suggests that impairments are due to natural conditions but provides little to no scientific evidence to support this assumption. It states:

"Sufficient samples exceeded the criterion for Iron in all WBIDs reviewed to declare impairment. Although **no detailed analyses** have been conducted to determine the sources of iron, it is possible that elevated concentrations represent natural conditions." [Emphasis added]

The Conservancy has recommended removal of all such passages where there are statements made without the scientific basis to support them, and we appreciate the county's steps towards having the consultant do so. We would like to see such language removed from any remaining unrevised memos, should these memos remain a part of the public record or be used for any future purpose. The Conservancy is a proponent of science-based policy, and believes that the current scientific information has been thoroughly vetted and analyzed in determining the state and verified pollution impairments. In the absence of scientific proof to the contrary, the current assessments and determinations should be used for forming and improving present policy decisions.

## 3. Premature Recommendation of Site Specific Alternative Criteria

The "Review of IWR Data" memo suggests a SSAC to set dissolved oxygen standards for the County. However, the document does not demonstrate that impairment is natural or cannot be managed to meet current standards. Unless evidence is provided to demonstrate that impairment is caused only by uncontrollable sources, the County should follow the total maximum daily load requirements (TMDL) as set by the state and federal government.

The Conservancy of Southwest Florida requests the County to remove suggestions of SSAC application in cases where there is not sufficient evidence to show that impairment is due solely to natural conditions. This includes references in the above mentioned memo, references in "Element 4 Task 3: Water Quality and Ecological Assessment of Lake Trafford" and in "Element 4 Task 3: Water Quality and Ecological Assessment of the Gordon River."

The Conservancy recommends the County work to have their concerns addressed in the FDEP TMDL and Basin Management Action Plan (BMAP) processes, which will

separate natural impairment from anthropogenic sources to ensure that the County is only required to manage the anthropogenic sources of pollution.

#### 4. Inappropriate approach towards questioning current TMDLs

Technical memo "Element 4 Task 3: Water Quality and Ecological Assessment of the Gordon River" raises concerns with the 2008 TMDL report for the Gordon River. This memo finds that the majority of water quality data from the Gordon River comes from a sampling station that is believed to be incorrectly classified as a freshwater location. This is an issue because there is a difference in water quality standards between marine and freshwater waterbodies.

The Gordon River (WBID 3278K) was verified impaired for dissolved oxygen (DO) as the waterbody did not meet the Class III freshwater DO criteria of 5 mg/L. However, the County's consultant argues that because the majority of sampling data comes from a station that could be considered marine under the Florida Administrative Code (FAC) 62.302.200, the waterbody is subject to a different set of DO standards. Under FAC 62-302.530, the DO standards for marine waterbodies shall never average less than 5.0 in 24 hours and should never be below 4.0 mg/L. The Gordon River and reference sites fail both marine and freshwater DO standards. This causes the consultant to question whether or not the County can meet DO standards as outlined in FAC 62-302. A recommendation is made at the end of the technical memo for site specific alternative criteria.

The Conservancy understands the County's concerns with regards to the elevated salinity at certain monitoring stations in the Gordon River. However, we do not feel that applying a SSAC is the appropriate solution. The Conservancy recommends if the County has determined there is a problem with the current Gordon River TMDL, they should consider presenting these issues to FDEP to pursue a revised TMDL. In the meantime, the County should continue to work towards meeting the existing TMDL. Even if a revised TMDL is developed for the Gordon River, it is highly unlikely that improving water quality in the meantime will result in an over-correction of the dissolved oxygen impairment. Instead, this effort will bring the County that much closer to meeting the newly revised TMDL.

#### 4. Missing Document

Lastly, we would like to request that technical memo 3.1 "Quality of Discharge" be made available on the County's website. This document is referenced in technical memo "Element 2, Task 3: Quality of Receiving Waters" section 4.2.3.5.

#### NEED FOR AN EFFECTIVE FERTILIZER ORDINANCE

The Conservancy has proposed a fertilizer ordinance to supplement the Watershed Management Plans in order to better protect our water from nutrient pollution which can lead to algal blooms that damage aquatic ecosystems and harm our economy. It is critical that an ordinance along with education and outreach efforts be implemented to protect the quality of life in our community.

In 2007, the Southwest Florida Regional Planning Council (SWFRPC) adopted a resolution that provided guidelines for a regional model fertilizer ordinance appropriate to the conditions of southwest Florida. This resolution was approved by all 22-member jurisdictions including Collier County and contains many components of an effective fertilizer ordinance. The Conservancy's proposed Collier County ordinance is modeled closely after the SWFRPC and other neighboring municipalities' ordinances.

The FDEP Model Ordinance for Florida-Friendly Fertilizer Use is intended to provide the minimum baseline fertilizer ordinance provisions that can be applied state-wide. The State Model is intended as a floor, not the ceiling, and current state statute allows for municipalities to enact more stringent regulations that may be needed to protect their water resources. In fact, the State Model recommends that municipalities with verified impaired waters consider the adoption of a more stringent ordinance. With 32% of the County not meeting state water quality standards for nutrients or impaired due to nutrients, Collier County should develop a more stringent ordinance which incorporates components of the regional ordinance in order to prevent major jurisdictional differences.

The Conservancy proposes the following protective and effective elements be included in the Collier County fertilizer ordinance:

1. No person shall apply fertilizers containing nitrogen and/or phosphorus to lawn, turf and/or landscape plants during the Rainy Season (June-September) and the Prohibited Application Period (during storm events or where greater than 2" of rainfall is expected), or to saturated soils.
2. No fertilizer shall be applied in or within ten (10) feet from the edge of any waterbody or seawall.
3. Fertilizers applied to lawn, turf, and/or landscape plants within the County shall contain no phosphorus per guaranteed analysis label.
4. Fertilizers applied to lawn, turf and/or landscape plants within the County shall contain no less than fifty (50) percent slow release nitrogen per guaranteed analysis label.
5. Fertilizers should be applied to lawn, turf and/or landscape plants at the lowest rate necessary without exceeding the maximum rate per application. Fertilizer shall not be applied at a rate greater than one (1) pound of nitrogen per 1,000 square feet per application. No more than four (4) pounds of nitrogen per 1,000 square feet shall be applied to any lawn, turf or landscape area in any calendar year.

To ensure the effective implementation of the ordinance, our proposal also includes educational and certificate components. As well, control of fertilizers on impervious surfaces is an included provision in our proposal.

The Conservancy recommends the County incorporate these elements to protect Collier County's water quality, natural environment and economy.

## CONCLUSION

In conclusion, we request that the County revise the technical memos to focus on meeting verified impaired water quality determinations and current TMDLs. We also continue to advocate that all speculative causes of impairment and inappropriate suggestions of Site Specific Alternative Criteria within all memos associated with Watershed Planning be removed. In the case that memos are not revised but are instead removed from the Collier County website, the Conservancy requests a written statement from the County specifying which documents have been removed from the website and stating that these documents will no longer be part of the public record or be used for any future reason. We believe such a statement would ensure that such documents do not resurface and cause confusion in the future.

In addition, the Conservancy would like to see the County develop County policies as part of the WMP which will protect and restore key wetland and water resource areas. We hope our proposed fertilizer ordinance (modeled off the City of Naples ordinance combined with the model ordinance), or a similarly stringent ordinance that has all the components of an effective fertilizer ordinance, will be a result of this effort. Please feel free to contact us should you wish to discuss this further, and thank you for your time and consideration in this matter.

Sincerely,



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cc Collier County Environmental Advisory Committee  
Collier County Planning Commission  
Jerry Kurtz, Collier County  
William Lorenz, Collier County