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September 17, 2009

Ms. Katherine Trott (CEIWR-GI)
 U.S. Army Corps of Engineers, Room 236, Casey Building
 7701 Telegraph Road, Alexandria, VA 22315

Subject: Public Notice # PN09-37 Eastern Mountains and Piedmont
 Regional Supplement to the 1987 Corps of Engineers Wetland Delineation
 Manual

Dear Ms. Trott:

On behalf of the Maryland-National Capital Building Industry Association (MNCBIA), I would like to provide the following comments on the *Draft Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Piedmont Supplement)*. The MNCBIA represents over 700 companies in the Maryland home building industry, and recognizes that regional differences in wetland ecology exist that this *Supplement* addresses. Our members conduct business in both the Piedmont and Coastal Plain regions of Maryland. As such, many of the environmental consultants in this area perform delineations in both regions and would greatly benefit from greater consistency between each region's supplement. Furthermore, the level of increased complexity and the expansion of Corps jurisdiction into areas that, prior to this draft *Supplement*, would have been considered uplands, causes us great concern. The reasoning for our concerns is explained in the comments below.

NEW INDICATORS:

The number of hydrophytic vegetation indicators has increased from 1 in the *1987 Corps of Engineers Wetland Delineation Manual (1987 Manual)* to 4 in the *Piedmont Supplement*. Indicators of wetland hydrology have increased from 10 in the *1987 Manual* to 29 in the *Piedmont Supplement*. Hydric soil indicators have increased from 10 in the *1987 Manual* to 23 in the *Piedmont Supplement* (27 if you include the hydric soil indicators for use in problem areas). On an empirical basis, each of these new indicators provides an opportunity to qualify an area as a wetland in an instance where, prior to the creation of the new indicator, the wetland would not have qualified. Although the definition of a wetland has remained constant in the *Piedmont Supplement*, the methodology for determining the area of a wetland appears to be designed to include more areas as

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wetlands. **This changed methodology is a de facto change to the definition and should be acknowledged as such.**

CONSISTENCY:

The MNCBIA is located in a region that straddles both the Coastal Plain and the Piedmont. There are some significant differences between the *Piedmont Supplement* and the recently implemented, *Atlantic and Gulf Coastal Plain Interim Regional Supplement to the 1987 Wetland Delineation Manual (Coastal Plain Supplement)*. These differences do not appear to be related to the differences in the regions. They are as follows:

- 1) The *Coastal Plain Supplement* describes 5 vegetative strata for use in quantifying hydrophytic vegetation while the *Piedmont Supplement* defines only 4 (combining the sapling and shrub layers).
- 2) In the *Coastal Plain Supplement*, woody vines are excluded from the herbaceous layer, yet in the *Piedmont Supplement*, woody vines are included in the herbaceous layer.
- 3) In the *Coastal Plain Supplement* the vegetation sampling plot for a routine determination is a 30-ft radius circle. In the *Piedmont Supplement*, three different plot sizes are offered:
 - a. A graduated series of plots, with a different plot size for each stratum (tree stratum at 30-ft radius; sapling/shrub stratum at 15-ft; herb stratum at 5-ft; and woody vines at 30-ft).
 - b. 1-m² plots for the herbaceous layer, nested within a 30-ft radius circle for remaining strata.
 - c. Sample all strata with a 30-ft radius plot.
- 4) The *Coastal Plain Supplement* has only two indicators of hydrophytic vegetation (the dominance test and the prevalence test), but the *Piedmont Supplement* has 4 (the rapid fire test, the dominance test, the prevalence test, and the morphological adaptations test).
- 5) There are four hydrologic indicators that appear in one supplement but not the other:
 - a. B-14, true aquatic plants (in *Piedmont Supplement* / not in *Coastal Plain Supplement*).
 - b. B-15, moss trim lines (in *Piedmont Supplement* / not in *Coastal Plain Supplement*).
 - c. D-1, stunted or stressed plants (in *Coastal Plain Supplement* / not in *Piedmont Supplement*).
 - d. D-4, microtopographic relief (in *Piedmont Supplement* / not in *Coastal Plain Supplement*).

Since these indicators can be observed in both regions, why are they listed in one but not the other?

Consistency between the supplements, to the extent practicable, should be strongly pursued to diminish the capacity for errors and confusion, especially in areas that will implement more than one supplement. The methodology in these supplements will be implemented by individuals with different education and professional backgrounds. **Providing simplicity and consistency within and between the supplements will benefit both delineators and reviewers of delineations alike.**

HYDROPHYTIC VEGETATION:

In the *1987 Manual*, the test for hydrophytic vegetation was the dominance test. If nonhydrophytic dominant plant species within a sample plot outnumbered hydrophytic dominant plant species, the sample plot was considered to be an upland plot, even if hydric soils and wetland hydrology were present.

With the *Piedmont Supplement*, the scenario just presented may still be a wetland. If the sample plot is located within an area that exhibits hydric soils and wetland hydrology and it “fails” the dominance test, then the prevalence index must be calculated. The prevalence index includes evaluation of the non-dominant plants within the plot. If the plant community “fails” the prevalence index, evaluate the FACU plant species present for morphological adaptations that indicate hydrophytic function, and if the adaptation is present on a sufficient percentage of individuals of that species, change its facultative status to FAC and recalculate the dominance and prevalence tests. If the vegetative community still fails to qualify as hydrophytic, evaluate the area for “problematic hydrophytic vegetation.”

This change in methodology blatantly pushes to include more areas as wetlands.

FACULTATIVE STATUS:

Since plants with a status of FAC are equally likely to be found in wetlands as in uplands, and since FAC+ and FAC plants are already counted toward hydrophytic vegetation in spite of this likelihood, the scale is already weighted in favor of a hydrophytic vegetation determination. The decision to exclude qualifiers on facultative statuses, in this *Supplement* and the *Coastal Plain Supplement* will move all plants with a status of FAC- from counting towards an upland vegetation determination to counting toward a hydrophytic vegetation determination. With such common plants as *Lonicera japonica* (Japanese honeysuckle) and *Pinus taeda* (loblolly pine) included in this shift, the change cannot help but incorporate more areas as wetlands that did not previously qualify. **What is the scientific basis for this decision and why does the “scale” have to be weighted toward uplands?**

SOIL INDICATORS:

Overall, the new supplements are heavily weighted with soil science and require significantly more scrutiny, data gathering, and multiple tiers of evaluation for processing that data. In several instances a professional soil scientist may be needed to make an appropriate determination, which may prove to be a significant limitation since licensed soil scientists are not as plentiful as other professionals. This added level of complexity may be technically sound, but may not be practical for application by the private sector. **New science and methods should be balanced with practicality of implementation to avoid onerous regulation that unnecessarily adds to the already escalating cost of development.**

PROBLEMATIC HYDROPHYTIC VEGETATION:

The *1987 Manual* defines a wetland as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

Under the section on problematic hydrophytic vegetation, the *Piedmont Supplement* lists “certain FACU species that commonly dominate wetlands.” This list of species includes plants commonly found on many delineation sites such as *Parthenocissus quinquefolia* (Virginia Creeper), *Rosa multiflora* (multiflora rose), *Lonicera tatarica* (tatarian honeysuckle), *Lonicera morrowii* (Morrow’s honeysuckle). The *Supplement* states that if hydric soils and wetland hydrology are present, and the area lacks hydrophytic vegetation indicators due to the presence of one or more of the FACU species on the list, drop the listed FACU species from the vegetation data and reevaluate the remaining species with each of the vegetation indicators. If the vegetation now scores as hydrophytic, the area is a wetland. This procedure directly contrasts with the definition of a wetland, which must support a “prevalence of vegetation *typically* adapted for life in saturated conditions.”

Another procedure under the *Supplement's* category of “Problematic Hydrophytic Vegetation” is “direct hydrologic observation.” This procedure states that if hydric soils are present and hydrology is directly observed for 14 consecutive days during the growing season (water table located at or within 12 inches of the surface), and antecedent precipitation has been normal or drier than normal, hydrophytic vegetation is considered present and the site is a wetland, regardless of the plant community that is present. This procedure also directly contrasts with the wetland definition’s requirement that a wetland must support a “prevalence of vegetation *typically* adapted for life in saturated conditions.”

IN SUMMARY:

The 149-page *Piedmont Supplement* presents a technically complex revision to the existing and established methodology. The reasoning behind the need for the new supplements is to recognize the significant differences in ecosystems between physiographic regions, and to add to the existing methodology for delineation of wetlands to accommodate those differences. After reviewing the *Piedmont Supplement*, it seems readily apparent that this document also includes a significant push to expand areas qualifying as wetlands. This has been accomplished, not by changing the definition of a wetland, but by changing the methodology used to interpret that definition. The changed methodology is a de facto change to the definition and should be acknowledged as such.

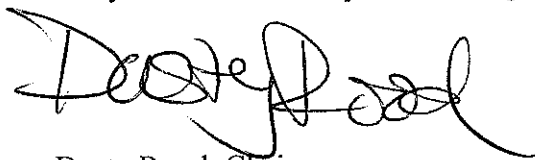
Furthermore, how does the expansion of Corps jurisdiction into areas, that prior to this *Supplement* were considered uplands, afford better protection to wetlands?

The *Piedmont Supplement* also represents a significant increase in the complexity of methods used in the delineation process. This complexity will translate to a substantial increase in costs and time to complete a delineation. The additional cost to private industry will ultimately be borne by the consumer.

Whenever and wherever possible, during the evaluation of the *Supplement* in its draft form, consistency and simplicity should be vigorously pursued to produce a document that is practical and easily implemented. As an association that will be directly and negatively impacted by a loss of developable land, the MNCBIA respectfully requests that this methodology be reexamined in light of these comments, and that consideration be given to the potential impacts that this supplement generates for businesses and consumers.

Thank you for your consideration and the opportunity to comment. If you have any questions, please contact Annette Rosenblum at 301-445-5407, arosenblum@mncbia.org.

Sincerely yours,
Maryland-National Capital Building Industry Association



Dusty Rood, Chair
Environmental Committee