

BEFORE THE ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY

APPEAL OF:

EPC # LPUT00-003

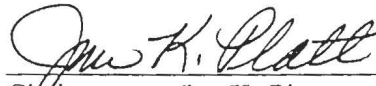
Putney, Louis W. and Jeanie T.  
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FINAL ADMINISTRATIVE ORDER

THIS APPEAL, having come before the Environmental Protection Commission of Hillsborough County (EPC) upon the Recommended Order of the Hearing Officer appointed herein, Vanessa N. Cohn, Esquire, and the Commission having considered said Recommended Order, a copy of which is attached hereto and made a part thereof, it is thereupon,

ORDERED, that the Recommended Order of the Hearing Officer be adopted in its entirety and the Executive Director's denial of the Appellants' application for authorization to impact wetlands be upheld for the reasons contained in the Recommended Order.

ORDERED this 28<sup>th</sup> day of June, 2000

  
\_\_\_\_\_  
Chairperson, Jan K. Platt

Environmental Protection  
Commission of Hillsborough  
County

TO: T. Andrew Zodrow, Esquire  
Environmental Protection  
Commission  
1900 9th Ave.  
(813) 272-5157 (fax no.)

Louis D. Putney, Esquire  
4808 South Himes Avenue  
Tampa, FL 33611  
(813) 831-8770 (fax no.)

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APPEAL OF:

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Putney, Louis W. and Jeanie T.  
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**RECOMMENDED ORDER**

Upon due notice, on April 4, 2000, a hearing was held in Tampa, Florida, by Vanessa Cohn, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (EPC), on the EPC's Motion for Summary Disposition.

**APPEARANCES**

For Appellants: Louis D. Putney, Esquire  
4805 South Himes Ave.  
Tampa, FL 33611-2616

For EPC: T. Andrew Zodrow, Esquire  
Environmental Protection Commission  
1900 9th Avenue  
Tampa, FL 33605

**STATEMENT OF THE ISSUE**

Whether the Executive Director of EPC, pursuant to the EPC Special Act 84-446 and Wetland Rule 1-11, had authority to issue authorization to Louis W. Putney and Jeanie T. Putney (Putney) to impact wetlands on their property.

## PRELIMINARY STATEMENT

The Putneys applied to EPC on August 10, 1999, for authorization to impact wetlands on their property located in Hillsborough County, Florida at folio No. 6149.0000. On October 15, 1999, EPC sent a letter to Mr. Putney recommending the application be denied. Among the reasons for the denial included a finding that (a) the proposed plan did not provide sufficient justification for the proposed project, (b) the applicant did not propose any mitigation for the impacts and (c) the proposed filling of the whole site did not attempt to avoid or minimize wetland impacts. On October 22, 1999, the Putneys responded by alleging the project was justified. Finally, on November 16, 1999, the Executive Director of EPC formally denied the request for authorization to impact wetlands on the property. The Putneys timely filed a Notice of Appeal on November 30, 1999, challenging the Executive Director's action. Shortly thereafter, the EPC referred the matter to the Hearing Officer, Vanessa Cohn. On March 15, 2000, the EPC filed a Motion for Summary.

### UNDISPUTED FACTS FOR PURPOSES OF SUMMARY DISPOSITION

1. Louis W. Putney and Jeanie T. Putney (Putneys) applied to EPC on August 10, 1999, for authorization to impact wetlands located on their property in Hillsborough County, Florida at folio No. 6149.0000.
2. On November 16, 1999, the EPC Executive Director denied the request of the Putneys to impact wetlands on their property.
3. On November 30, 1999, the Putneys filed a Notice of Appeal challenging the EPC Executive Director's decision to deny the impact to wetlands.
4. For purposes of the summary disposition, it was undisputed and the EPC acknowledges that some impact to the wetlands is required for the Putneys to make reasonable use

of the property. EPC also acknowledges for purposes of the summary disposition that the Putneys may even impact the entire wetland with a proper demonstration of adequate protection of the environmental benefits provided by the affected wetland.

5. In connection with their application to impact the wetlands on their property the Putneys have not proposed any on-site creation mitigation, off-site mitigation, either upland preservation or wetland creation mitigation.

6. The Putneys have proposed only using the existing County owned Hendry Road right-of-way adjacent to the site for use as minimization or possibly mitigation. The right-of-way is currently comprised of wetlands. Putneys have offered only to forego seeking closure of the County owned right-of-way.

7. Based on the submittals to EPC in the application for authorization to impact, the Putneys have not demonstrated how the environmental benefits provided by the affected wetlands would be adequately protected by specified conditions and time limitations which would be imposed upon approval of the development.

#### **CONCLUSIONS OF LAW**

8. The Hearing Officer has jurisdiction over the parties to and the subject matter of this proceeding pursuant to EPC's enabling act, 84-446, Laws of Florida, (Act) Section 9 and Rules of the Commission, § 1-2.33(4).

9. The applicants has the burden of proof to establish entitlement to a permit. Rules of the Commission, § 1-2.33(4); Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981).

10. Fact issues not raised by the Notice of Appeal shall be accepted as undisputed. Rules

of the Commission, § 1-2.33(4).

11. The owner of wetlands in Hillsborough County has no right to use them for a purpose for which they are unsuited in their natural state. In addition, it shall be the priority of the EPC to avoid the disturbance of wetlands in the County. Rules of the Commission, § 1-11.01(1).

12. Permits are required for construction which may permit pollutants or contaminants to escape into the air, water, soil or property. Section 11 of the Act.

13. It is unlawful to cause or take such action which may reasonably be expected to cause water pollution in Hillsborough County as defined in Section 3 (15) of the Act. Section 17 of the Act.

14. Development within wetlands of Hillsborough County which destroys, reduces, or impairs the wetland, such as that proposed by the Putneys, constitutes pollution. Rules of the Commission, § 1-11.05(1).

15. Development within wetlands is prohibited except to the extent as may be specifically authorized in writing by the Executive Director. Rules of the Commission, § 1-11.05(1).

16. Review of proposed development will be made by weighing the environmental benefit provided by the target wetland with the impact that the proposed development could reasonably be expected to have upon the wetland's ability to provide those benefits. Rules of the Commission, § 1-11.06(1).

17. Written authorization may be given for impacting wetlands "only if reasonable use of the land cannot be accomplished without affecting the wetland, and only if the benefits provided by the affected wetland are adequately protected by conditions and time limitations." Rules of the Commission, § 1-11.07.

18. In addition, pursuant to Rules of the Commission, § 1-11.08, where all or part of a wetland is destroyed or substantially altered by development, an acceptable mitigation shall include at least:

(1) acre for acre replacement of the same or better type of wetland providing the environmental benefits lost by reason of the proposed development. All such replacements must comply with applicable state Environmental Resource Permit requirements; (2) specific design requirements based upon conditions of the site and the type of wetland to be created or restored; (3) a schedule to remove exotic or nuisance vegetation; (4) monitoring and replacement to assure a specified survival rate of wetland vegetation for a reasonable period as specified in the plan; and (5) recorded designation as a permanent conservation area or easement as defined in section 704.065 F.S. Whenever the area to be preserved exceeds 0.5 acres, the conservation area must be recorded as a conservation easement.

An acceptable mitigation plan shall be reasonable and technically feasible.

19. As discussed in the Undisputed Facts section of this Recommended Order, the Putneys have not offered any mitigation pursuant to Rules of the Commission, § 1-11.08. The Executive Director therefore has no authority to grant written authorization to the Putneys to impact the wetlands on the subject property.

20. As discussed in the Undisputed Facts section of this Recommended Order, the Putneys have not established by any evidence that they have demonstrated the environmental benefits provided by the affected wetland would be adequately protected pursuant to Rules of the Commission, § 1-11.07. The Executive Director therefore has no authority to grant written authorization to the Putneys to impact the wetlands on the subject property.

21. The "Hearing Officer shall not reach constitutional issues where unnecessary to make a recommendation." Rules of the Commission, § 1-2.34(2). Because the Motion for Summary

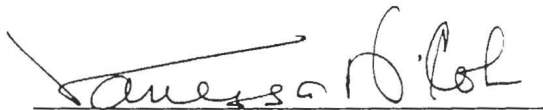
Disposition was directed to the Putneys' failure to demonstrate adequate protection pursuant to Rules of the Commission, § 1-11.07, constitutional issues are not relevant to the Executive Director's decision to deny the request for authorization to impact wetlands.

RECOMMENDATION

Based upon the foregoing undisputed facts and conclusions of law it is **RECOMMENDED** that the EPC enter a Final Order denying authorization to impact wetlands on the Putneys' property located in Hillsborough County, Florida at folio No. 6149.0000.

Respectfully submitted,

Dated: May 11, 2006



Vanessa N. Cohn, Esquire  
Hearing Officer for  
Environmental Protection Commission  
of Hillsborough County  
Cohn, Cohn & Hendrix, P.A.  
Post Office Box 3424  
Tampa, Florida 33601

cc: T. Andrew Zodrow, Esquire  
Louis D. Putney, Esquire



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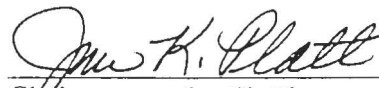
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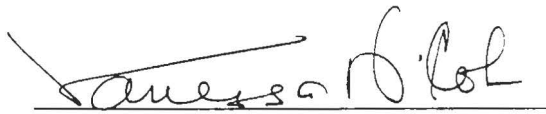
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Dated: May 11, 2006



Vanessa N. Cohn, Esquire  
Hearing Officer for  
Environmental Protection Commission  
of Hillsborough County  
Cohn, Cohn & Hendrix, P.A.  
Post Office Box 3424  
Tampa, Florida 33601

cc: T. Andrew Zodrow, Esquire  
Louis D. Putney, Esquire