



EPC COMMISSIONERS

Kevin Beckner, *Chair*
Lesley "Les" Miller, Jr., *Vice Chair*
Victor D. Crist
Ken Hagan
Al Higginbotham
Sandra L. Murman
Mark Sharpe

Richard Garrity, PhD
Executive Director

Richard Tschantz, Esq.
General Counsel

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

MEETING AGENDA

JANUARY 17, 2013

9 a.m.

*Commissioner's Board Room, County Center 2nd Floor
601 East Kennedy Boulevard, Tampa, FL*

INVOCATION AND PLEDGE OF ALLEGIANCE

REMOVAL OF CONSENT AGENDA ITEMS FOR QUESTIONS, COMMENTS, or SEPARATE VOTE

APPROVAL OF CHANGES TO THE AGENDA

I. PUBLIC COMMENT

Three (3) Minutes Are Allowed for Each Speaker (unless the Commission directs differently)

II. CITIZENS' ENVIRONMENTAL ADVISORY COMMITTEE

Summary of recent CEAC meeting by CEAC Chair

III. CONSENT AGENDA

A. Approval of Minutes: December 13, 2012	3
B. Monthly Activity Reports – December 2012	7
C. Pollution Recovery Fund Report	19
D. Gardinier Settlement Trust Fund Report.....	21
E. Legal Case Summary, January 2013.....	23
F. 2012 Year-End Action Plan Updates	27

IV. LEGAL & ADMINISTRATIVE SERVICES DIVISION

A. Final Order Hearing regarding the <u>Medero vs EPC</u> Dock Permitting Appeal (EPC Case No. 12-EPC-005).....	45
B. Approval of a Consent Decree between the United States, the Florida Department of Environmental Protection (FDEP), the Environmental Protection Commission (EPC) and Mosaic Fertilizer, LLC.....	83

V. ADVANCED LEADERSHIP DEVELOPMENT PROGRAM (ALDP)

Enhanced Priority Permitting – ALDP Presentation by Diana Lee	85
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VI. EXECUTIVE DIRECTOR REPORT

A. EPC's 2013 Action Plans.....	87
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Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

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An agency with values of environmental stewardship, integrity, honesty, and a culture of fairness and cooperation.

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DECEMBER 13, 2012 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, December 13, 2012, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Kevin Beckner and Commissioners Victor Crist (arrived at 9:12 a.m.), Ken Hagan, Lesley Miller Jr., Sandra Murman, and Mark Sharpe (arrived at 9:50 a.m.).

The following member was absent: Commissioner Al Higginbotham.

▶ Chairman Beckner called the meeting to order at 9:01 a.m.

▶ INVOCATION AND PLEDGE OF ALLEGIANCE

CHANGES TO THE AGENDA

▶ Dr. Richard Garrity, EPC Executive Director, reviewed the changes. Chairman Beckner sought a motion to accept the changes to the agenda. **Commissioner Murman so moved, seconded by Commissioner Miller, and carried four to zero.** (Commissioners Crist and Sharpe had not arrived; Commissioner Higginbotham was absent.)

I. PUBLIC COMMENT - ▶ None.

II. CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Summary of recent CEAC meeting by CEAC Chairman - **Deferred to a subsequent meeting.**

III. CONSENT AGENDA

- A. Approval of Minutes: October 18, 2012.
- B. Monthly Activity Reports - October and November 2012.
- C. Pollution Recovery Fund (PRF) Report.
- D. Gardinier Settlement Trust Fund Report.
- E. Legal Case Summary, December 2012.
- F. RESTORE Projects Update.

▶ Chairman Beckner called for a motion to approve the Consent Agenda. **Commissioner Miller so moved, seconded by Commissioner Murman, and carried**

THURSDAY, DECEMBER 13, 2012 - DRAFT MINUTES

four to zero. (Commissioners Crist and Sharpe had not arrived; Commissioner Higginbotham was absent.)

IV. AGENCY PROCESS IMPROVEMENT PROJECTS

A. Hillsborough Municipalities Permit Streamlining Efforts

▶ Mr. Jerry Campbell, Director, EPC Air Management Division, highlighted background material. No action was required.

B. E-Pay Update - **Deferred to a subsequent meeting.**

C. Economic Prosperity Stakeholder Committee (EPSC) and Feedback Group Update

▶ EPC General Counsel Richard Tschantz reviewed the item, as contained in background material. ▶ Dr. Scott Emery, Director, EPC Wetlands Management Division, offered additional information. Comments followed.

V. WATER MANAGEMENT DIVISION

PRF Funding Approval/Fertilizer Study Peer Review

▶ Mr. Sam Elrabi, Director, EPC Water Management Division, detailed the item, as included in background material, and sought approval of staff recommendation. After discussion, ▶ **Commissioner Murman moved to approve.** Chairman Beckner clarified the recommendation, **which was seconded by Commissioner Crist, and carried four to zero.** (Commissioner Hagan was out of the room; Commissioner Sharpe had not arrived; Commissioner Higginbotham was absent.) Dr. Garrity expanded on the presentation.

VI. AGENCY STRATEGIC PLANNING

Strategic Plan Presentation and Request for Feedback

▶ Dr. Garrity outlined the item, as provided in background material. Commissioner Crist suggested adding the words "which contribute to our quality of life" to the EPC mission statement. Dr. Garrity would bring the item back at the January 2013 EPC meeting. ▶ EPC board members supported partnering with the Tampa Bay Workforce Alliance Incorporated for specified work training, prioritizing items around the EPC mission statement, acquisition of the Accela software program, engaging/recognizing EPC employees, creation of a university internship program, and going forward with the Sterling challenge designation.

THURSDAY, DECEMBER 13, 2012 - DRAFT MINUTES

VII. EXECUTIVE DIRECTOR CONTRACT

Executive Director Contract

▶ Attorney Tschantz expounded on background material. Chairman Beckner suggested approving the contract with the possibility of future amendments to reflect changes in County policy, to which Attorney Tschantz agreed.

▶ Commissioner Miller moved to adopt the contract of Dr. Garrity as presented by the general counsel, seconded by Commissioner Murman, and carried five to zero. (Commissioner Hagan was out of the room; Commissioner Higginbotham was absent.)

▶ There being no further business, the meeting was adjourned at 10:01 a.m.

READ AND APPROVED: _____

CHAIRMAN

ATTEST:

PAT FRANK, CLERK

By: _____

Deputy Clerk

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**FY 13 - MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION**

DEC

A. Public Outreach/Education Assistance

1	Phone calls	142
2	Literature Distributed	11
3	Presentations	2
4	Media Contacts	0
5	Internet	3
6	Host/Sponsor Workshops, Meetings, Special Events	0

B. Industrial Air Pollution Permitting

1	Permit Applications received (Counted by Number of Fees Received)	
	a. Operating	7
	b. Construction	4
	c. Amendments / Transfers / Extensions	1
	d. Title V Operating:	9
	e. Permit Determinations	1
	f. General	0
	Delegated Permits Issued by EPC and Non-delegated Permits	
2	Recommended to DEP for Approval ^1 (Counted by Number of Fees Collected) - ^2 Counted by Number of emission Units affected by the Review)	
	a. Operating^1	4
	b. Construction ^1	8
	c. Amendments / Transfers / Extensions^1	1
	d. Title V Operating ^2	0
	e. Permit Determinations	0
	f. General	5
3	Intent to Deny Permit Issued	0

C. Administrative Enforcement

1	New cases received	1
2	On-going administrative cases	
	a. Pending	1
	b. Active	1
	c. Legal	1
	d. Tracking compliance (Administrative)	9
	e. Inactive/Referred cases	0
	TOTAL	12
3	NOIs issued	0

**FY 13 - MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION**

		DEC
4	Citations issued	0
5	Consent Orders Signed	0
6	Contributions to the Pollution Recovery Fund	\$ -
7	Cases Closed	2
D. Inspections		
1	Industrial Facilities	31
2	Air Toxics Facilities	
	a. Area Sources (i.e. Drycleaners, Chrome Platers, etc.)	1
	b. Major Sources	17
3	Asbestos Demolition/Renovation Projects	11
E. Open Burning Permits Issued		1
F. Number of Division of Forestry Permits Monitored		171
G. Total Citizen Complaints Received		33
H. Total Citizen Complaints Closed		30
I. Noise Complaints Received by EPC (Chapter 1-10)		24
J. Air Program's Input to Development of Regional Impacts		709
K. Number of cases EPC is aware that both EPC & Sheriff responded		1
L. Noise Sources Monitored:		3
M. Air Program's Input to Development Regional Impacts:		0
N. Test Reports Reviewed:		56
O. Compliance:		
1	Warning Notices Issued	3
2	Warning Notices Resolved	1
3	Advisory Letters Issued	2
P. AOR'S Reviewed		56
Q. Permits Reviewed for NESHAP Applicability		3
R. Planning Documents coordinated for Agency Review		1

**FY 12 - MONTHLY ACTIVITIES REPORT
WASTE MANAGEMENT DIVISION**

DEC

A. ENFORCEMENT

1.	New cases received	1
2.	On-going administrative cases	82
	Pending	3
	Active	28
	Legal	8
	Tracking Compliance (Administrative)	42
	Inactive/Referred Cases	1
3.	NOI's issued	-
4.	Citations issued	-
5.	Consent Orders and Settlement Letter Signed	-
6.	Civil Contributions to the Pollution Recover Fund (\$)	\$ -
7.	Enforcement Costs Collected (\$)	\$ -
8.	Cases Closed	-

B. SOLID AND HAZARDOUS WASTE

1.	FDEP Permits Received	0
2.	FDEP Permits Reviewed	0
3.	EPC Authorization for Facilities NOT Requiring DEP Permit	1
4.	Other Permits and Reports	
	County Permits Received	2
	County Permits Reviewed	6
	Reports Received (SW/HW + SQG)	9
	Reports Reviewed (SW/HW + SQG)	18
5.	Inspections (Total)	
	Complaints (SW/HW + SQG)	17
	Compliance/Reinspections (SW/HW + SQG)	9
	Facility Compliance	13
	Small Quantity Generator Verifications	132
	P2 Audits	0
6.	Enforcement (SW/HW + SQG)	
	Complaints Received	17
	Complaints Closed	19
	Warning Notices Issued	1
	Warning Notices Closed	0
	Compliance Letters	5
	Letters of Agreement	0
	Agency Referrals	3
7.	Pamphlets, Rules and Material Distributed	2

C. STORAGE TANK COMPLIANCE

1.	Inspections	
	Compliance	55
	Installation	4
	Closure	5
	Compliance Re-Inspections	13
2.	Installation Plans Received	1

**FY 12 - MONTHLY ACTIVITIES REPORT
WASTE MANAGEMENT DIVISION**

DEC

3.	Installation Plans Reviewed	-
4.	Closure Plans & Reports	
	Closure Plans Received	2
	Closure Plans Reviewed	2
	Closure Reports Received	-
	Closure Reports Reviewed	4
5.	Enforcement	
	Non-Compliance Letters Issued	35
	Warning Notices Issued	-
	Warning Notices Closed	2
	Cases Referred to Enforcement	1
	Complaints Received	1
	Complaints Investigated	1
	Complaints Referred	-
6.	Discharge Reporting Forms Received	3
7.	Incident Notification Forms Received	4
8.	Cleanup Notification Letters Issued	3

D. STORAGE TANK CLEANUP

1.	Inspections	32
2.	Reports Received	74
3.	Reports Reviewed	71
	Site Assessment Received	8
	Site Assessment Reviewed	9
	Source Removal Received	2
	Source Removal Reviewed	4
	Remedial Action Plans (RAP'S) Received	4
	Remedial Action Plans (RAP'S) Reviewed	7
	Site Rehabilitation Completion Order/No Further Action Rec'd	6
	Site Rehabilitation Completion Order/No Further Action Revw'd	3
	Active Remediation/Monitoring Received	36
	Active Remediation/Monitoring Reviewed	34
	Others Received	18
	Others Reviewed	14

E. RECORD REVIEWS

19

F. LEGAL PIR'S

11

**FY 12 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

DEC

A. ENFORCEMENT

1.	New Enforcement Cases Received	3
2.	Enforcement Cases Closed	2
3.	Enforcement Cases Outstanding	38
4.	Enforcement Documents Issued	2
5.	Recovered Costs to the General Fund	\$1,520
6.	Contributions to the Pollution Recovery Fund	\$2,699

B. PERMITTING/PROJECT REVIEW - DOMESTIC

1.	Permit Applications Received	11
	a. Facility Permit	2
	(i) Types I and II	1
	(ii) Type III	1
	b. Collection Systems - General	4
	c. Collection systems-Dry Line/Wet Line	5
	d. Residuals Disposal	-
2.	Permit Applications Approved	25
	a. Facility Permit	4
	b. Collection Systems - General	8
	c. Collection systems-Dry Line/Wet Line	7
	d. Residuals Disposal	-
3.	Permit Applications Recommended for Disapproval	6
	a. Facility Permit	-
	b. Collection Systems - General	-
	c. Collection systems-Dry Line/Wet Line	-
	d. Residuals Disposal	-
4.	Permit Applications (Non-Delegated)	-
	a. Recommended for Approval	-
5.	Permits Withdrawn	-
	a. Facility Permit	-
	b. Collection Systems - General	-
	c. Collection systems-Dry Line/Wet Line	-
	d. Residuals Disposal	-
6.	Permit Applications Outstanding	39
	a. Facility Permit	6
	b. Collection Systems - General	11
	c. Collection systems-Dry Line/Wet Line	22
	d. Residuals Disposal	-
7.	Permit Determination	-
8.	Special Project Reviews	
	a. Reuse	-

**FY 12 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

DEC

b. Residuals/AUPs	-
c. Others	-

C. INSPECTIONS - DOMESTIC

1. Compliance Evaluation	7
a. Inspection (CEI)	4
b. Sampling Inspection (CSI)	3
c. Toxics Sampling Inspection (XSI)	-
d. Performance Audit Inspection (PAI)	-
2. Reconnaissance	36
a. Inspection (RI)	3
b. Sample Inspection (SRI)	1
c. Complaint Inspection (CRI)	31
d. Enforcement Inspection (ERI)	1
3. Engineering Inspections	12
a. Reconnaissance Inspection (RI)	-
b. Sample Reconnaissance Inspection (SRI)	-
c. Residual Site Inspection (RSI)	-
d. Preconstruction Inspection (PCI)	-
e. Post Construction Inspection (XCI)	12
f. On-site Engineering Evaluation	-
g. Enforcement Reconnaissance Inspection (ERI)	-

D. PERMITTING/PROJECT REVIEW - INDUSTRIAL

1. Permit Applications Received	1
a. Facility Permit	-
(i) Types I and II	-
(ii) Type III with Groundwater Monitoring	-
(iii) Type III w/o Groundwater Monitoring	-
b. General Permit	-
c. Preliminary Design Report	-
(i) Types I and II	-
(ii) Type III with Groundwater Monitoring	-
(iii) Type III w/o Groundwater Monitoring	1
2. Permits Recommended to DEP for Approval	-
3. Special Project Reviews	1
a. Facility Permit	-
b. General Permit	-
4. Permitting Determination	-
5. Special Project Reviews	30
a. Phosphate	8

**FY 12 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

DEC

b. Industrial Wastewater	8
c. Others	14

E. INSPECTIONS - INDUSTRIAL

1. Compliance Evaluation (Total)	4
a. Inspection (CEI)	4
b. Sampling Inspection (CSI)	-
c. Toxics Sampling Inspection (XSI)	-
d. Performance Audit Inspection (PAI)	-
2. Reconnaissance (Total)	8
a. Inspection (RI)	2
b. Sample Inspection (SRI)	-
c. Complaint Inspection (CRI)	6
d. Enforcement Inspection (ERI)	-
3. Engineering Inspections (Total)	7
a. Compliance Evaluation (CEI)	6
b. Sampling Inspection (CSI)	-
c. Performance Audit Inspection (PAI)	-
d. Complaint Inspection (CRI)	1
e. Enforcement Reconnaissance Inspections (ERI)	-

F. INVESTIGATION/COMPLIANCE

1. Citizen Complaints	
a. Domestic	36
(i) Received	18
(ii) Closed	18
b. Industrial	9
(i) Received	4
(ii) Closed	5
2. Warning Notices	
a. Domestic	4
(i) Issued	-
(ii) Closed	4
b. Industrial	1
(i) Issued	1
(ii) Closed	-
3. Non-Compliance Advisory Letters	3
4. Environmental Compliance Reviews	
a. Industrial	37
b. Domestic	96
5. Special Project Reviews	10

**FY 12 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

DEC

G. RECORD REVIEWS

1.	Permitting Determination	3
2.	Enforcement	1

**H. ENVIRONMENTAL SAMPLES ANALYZED/REPORTS
REVIEWED (LAB)**

1.	Air division	62
2.	Waste Division	-
3.	Water Division	9
4.	Wetlands Division	-
5.	ERM Division	178
6.	Biomonitoring Reports	-
7.	Outside Agency	18

I. SPECIAL PROJECT REVIEWS

1.	DRIs	1
2.	ARs	-
3.	Technical Support	1
4.	Other	3

**FY 12 - MONTHLY ACTIVITIES REPORT
WETLANDS MANAGEMENT DIVISION**

DEC

ASSESSMENT REPORT

Agriculture Exemption Report

# Agricultural Exemptions Reviews	-
# Isolated Wetlands Impacted	-
# Acres of Isolated Wetlands Impacted	-
# Isolated Wetlands qualify for Mitigation Exemption	-
# Acres of Wetlands qualify for Mitigation Exemption	-

Development Services Reviews Performance Report

# of Reviews	51
Timeframes Met	100%
Year to Date	99%

Formal Wetland Delineation Surveys

Projects	6
Total Acres	63
Total Wetland Acres	17
# Isolated Wetlands < 1/2 Acre	3
Isolated Wetland Acreage	0.64

Construction Plans Approved

Projects	10
Total Wetland Acres	19
#Isolated Wetlands < 1/2 Acre	2
Isolated Wetland Acreage	0.36
Impacts Approved Acreage	0.24
Impacts Exempt Acreage	0.24

Mitigation Sites in Compliance

Ratio	34/37
Percentage	92%

Compliance Actions

Acreage of Unauthorized Wetland Impacts	0.30
Acreage of Water Quality Impacts	0.00
Acreage Restored	0.5

TPA Minor Work Permit

Permit Issued	12
Permits Issued Fiscal Year 2013	47
Cumulative Permits Issue Since TPA Delegation (07/09)	643

REVIEW TIMES

# of Reviews	212
% On Time	99%
% Late	1%

WETLANDS MANAGEMENT DIVISION

DEC**A. General**

1.	Telephone conferences	717
2.	Unscheduled Citizen Assistance	282
3.	Scheduled Meetings	352
4.	Correspondence	1,728
1/ 5.	Intergency Coordination	117
1/ 6.	Trainings	12
1/ 7.	Public Outreach/Education	-
1/ 8.	Quality Control	93

B. Assessment Reviews

1.	Wetland Delineations	12
2.	Surveys	10
3.	Miscellaneous Activities in Wetland	19
4.	Mangrove	2
5.	Notice of Exemption	3
6.	Impact/Mitigation Proposal	8
7.	Tampa Port Authority Reviews	43
8.	Wastewater Treatment Plants (FDEP)	1
9.	Development Reg'n'l Impact (DRI) Annual Report	-
10.	On-Site Visits	102
11.	Phosphate Mining	-
12.	Comp Plan Amendment (CPA)	-
1/ 13.	AG SWM	-
	Sub-Total	

Planning and Growth Management Review

14.	Land Alteration/Landscaping	-
15.	Land Excavation	-
16.	Rezoning Reviews	8
17.	Site Development	22
18.	Subdivision	20
19.	Wetland Setback Encroachment	-
20.	Easement/Access-Vacating	-
21.	Pre-Applications	36
1/ 22.	Agriculture Exemption	-
	Sub-Total	
	Total Assessment Review Activities	

C. Investigation and Compliance

1.	Warning Notices Issued	3
2.	Warning Notices Closed	5
1/ 3.	Complaints Closed	12
4.	Complaint Inspections	24
5.	Return Compliance Inspections for Open Cases	15

WETLANDS MANAGEMENT DIVISION

DEC

6.	Mitigation Monitoring Reports	13
7.	Mitigation Compliance Inspections	37
8.	Erosion Control Inspections	13
9.	MAIW Compliance Site Inspections	32
10.	TPA Compliance Site Inspections	32
2/ 11	Mangrove Compliance Site Inspections	1
1/ 12	Conservation Easement Inspection	10

D. Enforcement

1.	Active Cases	6
2.	Legal Cases	4
3.	Number of "Notice of Intent to Initiate Enforcement"	-
4.	Number of Citations Issued	-
5.	Number of Consent Orders Signed	2
6.	Administrative - Civil Cases Closed	4
7.	Cases Referred to Legal Department	4
8.	Contributions to Pollution Recovery	\$ 2,299
9.	Enforcement Costs Collected	\$ 453

E. Ombudsman

1.	Agriculture	5
2.	Permitting Process & Rule Assistance	4
3.	Staff Assistance	1
4.	Citizen Assistance	7

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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 13 POLLUTION RECOVERY FUND
10/1/2012 through 12/31/2012**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 542,334	Artificial Reef	\$ 146,828	Minimum Balance	\$ 120,000	
Interest	\$ 421	Project Monitoring	\$ 32,514	PROJ. FY 14 Budgets	\$ 179,342	
Deposits	\$ 32,322	FY 13 Projects	\$ -	Asbestos Removal	\$ 5,000	
Refunds	\$ 8,228					
Total	\$ 583,305	Total	\$ 179,342	Total	\$ 304,342	\$ 99,621



PROJECT		Project Amount	Project Balance
FY 10 Projects			
#09-01 - Basis of Review for Borrow Pit Applications	EPE30442	\$ 68,160	\$ 3,369
#09-02 - Effects of Restoration on Use of Habitat	EPE30443	84,081	16,725
		\$ 152,241	\$ 20,094
FY 12 Projects			
Bahia Beach Mangrove Enhancement	EPE30449	\$ 56,700	\$ 56,700
Fertilizer Rule Implementation	EPE40206	\$ 50,000	\$ 39,539
USGS Partnership	EPE30450	\$ 25,000	\$ 18,750
		\$ 131,700	\$ 114,989
			\$ 135,083

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**ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 FY 13 GARDINIER SETTLEMENT TRUST FUND
 10/1/2012 - 12/31/2012**

Fund Balance as of 10/1/12	\$ 61,274
Interest Accrued	37
Disbursements FY 13	-
Fund Balance	\$ 61,311
Encumbrances Against Fund Balance:	
Cockroach Bay ELAPP Restoration	\$ 61,311
Total Encumbrances	\$ 61,311
Fund Balance Available	\$ -

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: January 17, 2013

Subject: Monthly Legal Case Summary

Agenda Section: Consent Agenda

Division: Legal and Administrative Services

Recommendation: None, informational update.

Brief Summary: The EPC Legal Department provides a monthly summary of its ongoing civil, appellate, and administrative matters.

Financial Impact: No Financial Impact anticipated; information update only.

Background: In an effort to provide the Commission with timely information regarding legal challenges, the EPC staff provides this monthly summary. The update serves not only to inform the Commission of current litigation but may also be used as a tool to check for any conflicts they may have. The summary provides general details as to the status of the civil and administrative cases. There is also a listing of cases where parties have asked for additional time in order to allow them to decide whether they will file an administrative challenge to an agency action (e.g. – permit or enforcement order), while concurrently attempting to seek resolution of the agency action.

EPC LEGAL DEPARTMENT MONTHLY REPORT

January 2013

I. ADMINISTRATIVE CASES

James Baldor [12-EPC-015]: On October 24, 2012, the Appellant, James Baldor, filed a request for an extension of time to file an Appeal challenging the Denial of Application for Minor Work Permit #53790. The extension has been granted and the Appellant filed an appeal in this matter on December 28, 2012. (AZ)

J.E. McLean, III and RaceTrac Petroleum, Inc. [12-EPC-014]: On October 24, 2012, the Appellant, RaceTrac Petroleum, Inc., filed a request for an extension of time to file an Appeal challenging the Executive Director's denial for wetland impacts. The extension was granted and the Appellant filed an appeal in this matter on December 7, 2012. (AZ)

Tampa Electric Company, Polk Power Station, Polk 2-5 Combined Cycle Conversion Project: [12-EPC-016]: EPC is a commenting agency and potential administrative party to this DEP power station siting certification permit application and hearing.

James and Liana O'Drobinak [12-EPC-011]: On July 31, 2012 the Appellants filed a request for an extension of time to file a Notice of Appeal challenging the EPC's denial of a Minor Work Permit for the relocation of a boat lift. The request was granted and the Appellant had until September 6, 2012 to file a Notice of Appeal in this matter. On Sept. 6, 2012, the Appellant filed a Notice of Appeal. The case has been forwarded to a Hearing Officer to conduct an Administrative Hearing. (AZ).

Joseph and Jennifer Ferrante [12-EPC-006]: On May 7, 2012 the EPC received a Request for Variance or Waiver from Joseph and Jennifer Ferrante. The Applicant is requesting a waiver from a provision within the Submerged Lands Management Rules of the Tampa Port Authority regarding setback encroachments. A public hearing is scheduled for September 20, 2012 to consider the variance. The hearing was continued until further notice. (AZ)

Richard Medero and Susan Medero [12-EPC-005]: On May 11, 2012 Richard and Susan Medero filed a Notice of Appeal challenging the Executive Director's Notice of Change of Agency Action regarding the Appellants' permit for modifications to a dock. In accordance with Chapter 1-2, Administrative Procedures, a Hearing Officer has been assigned to this case and an administrative hearing will be conducted. A neighbor has also requested to intervene in the case in support of the EPC Executive Director's decision. The Hearing Officer denied the request to intervene filed by Mr. Atkins. The parties conducted the final hearing on October 30, 2012. The Hearing Officer provided a recommended order in favor of the Mederos, and exceptions to the order and a final order will be argued before the Commission in its quasi-judicial capacity on January 17, 2013. (AZ)

II. CIVIL CASES

Oak Hammock Ranch, LLC, James P. Gill, III, as Custodian [12-EPC-018]: On December 28, 2012 EPC was served a lawsuit regarding the Upper Tampa Bay Trail Wetland Impact Approval. The Agency will be filing a response to the Complaint. (AZ)

Peter L. Kadyk/Eco Wood Systems, Inc. [11-EPC-007]: On August 18, 2011, the Commission granted authority to pursue appropriate legal action against Defendant Peter L. Kadyk/Eco Wood Systems, Inc. for failure to comply with the terms of a signed Consent Order to resolve Chapter 1-11 wetlands violations. A small claims action was filed but is still pending based on the failure to timely serve the respondent. (AZ)

6503 US Highway 301, LLC [LEPC10-021]: On November 4, 2010, the EPC Legal Department filed a Complaint for Civil Penalties and Injunctive Relief against the new owner Defendant 6503 US Highway 301, LLC. This case is a continuation of the previous action against SJ Realty for environmental violations at the former 301 Truckstop site on Highway 301. The parties are in negotiation to settle the matter. (AZ)

Greg and Karin Hart [LEPC10-004]: On March 18, 2010 the Commission granted authority to take legal action against the Defendants Mr. and Mrs. Greg Hart for various impacts to wetlands that are violations of the EPC Act, Chapter 1-11 (Wetland Rule), and a conservation easement encumbering the Defendants' property. On March 29, 2010, the EPC filed a civil lawsuit in Circuit Court. The case was consolidated with a related Hillsborough County case seeking an injunction to remove fill from a drainage canal. A second mediation on January 21, 2011, resulted in a very limited partial settlement with EPC and full settlement with the County. A jury trial was held the week of September 19, 2011. The jury returned a verdict in favor of the EPC. Defendants filed a motion for new trial and an appeal of the jury verdict. The appeal was dismissed as premature and the request for a new trial was denied. The Defendants then appealed the denial of a new trial, which was dismissed. A hearing was held on February 13 and 23, 2012, to impose corrective actions and penalties. A Final Judgment Against Defendants was entered on March 5, 2012, requiring Defendants to restore the wetland and pay penalties. Defendants filed a Motion for Relief from Judgment dated May 22, 2012 and the court denied the

motion on July 30, 2012. On July 31, 2012, the court awarded the EPC reasonable trial costs. The Harts moved for re-consideration of the Motion for Relief from Judgment denial and it was denied. The denial is under appeal. The EPC moved for contempt, but the Court ordered the EPC to conduct the wetland remediation and charge the Harts. (RM)

Charles H. Monroe, individually, and MPG Race Track LTD [LEPC09-017]: On September 17, 2009 the EPC Board granted authority to take legal action against Respondents for violations of the EPC Act and EPC Rule Chapter 1-11. A Citation was issued on June 29, 2009, the Respondent failed to appeal the citation and it became a final order of the Agency enforceable in Court. (AZ)

Dubliner North, Inc. [LEPC09-015]: On September 17, 2009 the Commission granted authority to take legal action against Respondent for violations of the EPC Act and EPC Rules, Chapter 1-10 (Noise). A Citation to Cease and Order to Correct Violation was issued on July 24, 2009, the Respondent failed to appeal the citation and it became a final order of the Agency enforceable in court. On May 5, 2010 the EPC filed a civil lawsuit in Circuit Court. The Defendant did not respond to the complaint, thus a default was issued on September 30, 2010. A trial was set for the week of May 9, 2011. The parties attended court-ordered mediation on April 22, 2011. A Mediation Settlement Agreement was entered on April 22, 2011. On August 8, 2011, the EPC filed a Notice of Voluntary Dismissal. Defendant has not complied with the terms of the settlement, EPC filed a motion to enforce the Settlement and a hearing was held on August 2, 2012 and a Judgment Against Defendant was entered. The Defendant paid the negotiated penalty, but corrective actions are pending. (RM)

U.S. Bankruptcy Court in re Jerry A. Lewis [LEPC09-011]: On May 1, 2009 the U.S. Bankruptcy Court Middle District of Florida filed a Notice of Chapter 13 Bankruptcy Case regarding Jerry A. Lewis. On May 26, 2009, the EPC filed a Proof of Claim with the Court. The EPC's basis for the claim is a recorded judgment lien awarded in Civil Court against Mr. Lewis concerning unauthorized disposal of solid waste. The EPC is preparing to seek relief from the bankruptcy stay to get an award of stipulated penalties from the state court. The site remains out of compliance with applicable EPC solid waste regulations. (AZ)

Grace E. Poole and Michael Rissell [LEPC08-015]: Authority to take appropriate legal action against Grace E. Poole and Michael Rissell for failure to properly assess petroleum contamination in accordance with EPC and State regulations was granted on June 19, 2008. The property owner and/or other responsible party are required to initiate a site assessment and submit a Site Assessment Report. They have failed to do the required work and the EPC is attempting to obtain appropriate corrective actions. (AZ)

Petrol Mart, Inc. [LEPC07-018]: Authority to take appropriate action against Petrol Mart, Inc. to seek corrective action, appropriate penalties and recover administrative costs for improperly abandoned underground storage tanks and failure to address petroleum contamination was granted on June 21, 2007. The owner of the property is insolvent and the corporation inactive; however, the Waste Management Division intends on obtaining a judgment and lien on the property for the appropriate corrective actions. The Legal Department filed a civil lawsuit on September 26, 2007. The defendant was served with the lawsuit on October 12, 2007. The Court entered a default on November 9, 2007 for the Defendant's failure to respond. The EPC Legal Department set this matter for trial on March 26, 2008. The Court ruled in favor of EPC and entered a Default Judgment against the Defendant awarding all corrective actions, penalties of \$116,000 and costs of \$1,780. In the event the corrective actions are not completed the court also authorized the EPC to contract to have the site cleaned and to add those costs to the lien on the property. PRF monies were allocated in November 2008 to assist in remediating the site. (AZ)

Tranzparts, Inc. and Scott Yaslow [LEPC06-012]: Authority was granted on April 20, 2006 to pursue appropriate legal action against Tranzparts, Inc., Scott Yaslow, and Ernesto and Judith Baizan to enforce the agency requirement that various corrective actions and a Preliminary Contamination Assessment Plan be conducted on the property for discharges of oil/transmission fluid to the environment. The EPC entered a judicial settlement (consent final judgment [CFJ]) with Tranzparts and Yaslow only on February 16, 2007 (no suit was filed against the Baizans). The Defendants have only partially complied with the CFJ, thus a hearing was held on April 28, 2008, wherein the judge awarded the EPC additional penalties. A second hearing was held on January 25, 2010, for a second contempt proceeding and additional penalties. The Judge found the Defendants in contempt and levied stipulated penalties/costs, and a contempt order was executed by the judge on March 15, 2010 requiring the facility to temporarily shut down until the facility is remediated. On January 7, 2013 the EPC deemed the facility had met the CFJ-required remediation requirements, but other obligations are still due as are penalties and costs. (RM)

Boyce E. Slusmeyer [LEPC10-019]: On Sept 20, 2001 the EPC staff received authority to take legal action for failure to comply with an Executive Director's Citation and Order to Correct Violation for the failure to initiate a cleanup of a petroleum-contaminated property. The Court entered a Consent Final Judgment on March 13, 2003. The Defendant has failed to perform the appropriate remedial actions for petroleum contamination on the property. The EPC filed a lawsuit on October 7, 2010 seeking injunctive relief and recovery of costs and penalties. The EPC is waiting for the lawsuit to be served. (AZ)

III. PENDING ADMINISTRATIVE CHALLENGES

The following is a list of cases assigned to the EPC Legal Department that are not in litigation, but a party has asked for an extension of time to file for administrative litigation in an effort to negotiate a settlement prior to forwarding the case to a Hearing Officer. The below list may also include waiver or variance requests.

Cordoba-Ranch Development, LLC [11-EPC-008]: On September 9, 2011 the Appellant, Cordoba-Ranch Development, LLC, filed a request for an extension of time to file an Appeal challenging the Citation to Cease and Order to Correct Violation that was issued on August 25, 2011. The extension was granted and the Appellant has until September 10, 2012 to file a Notice of Appeal in this matter. (AZ)

Sun Communities, Inc. [12-EPC-012]: On August 2, 2012, the Petitioner filed a request for an extension of time to file a Petition for Administrative Hearing to challenge a Notice of Permit Denial. The request was granted and the Petitioner was initially granted until November 15, 2012 to file a petition in this matter, but that has subsequently been extended to February 13, 2013. (RM)



EPC Agenda Item Cover Sheet

Date of EPC Meeting: January 17, 2013

Subject: 2012 Year-end Action Plan Updates

Agenda Section: Consent Agenda

Division: Executive Director

Recommendation: None – Informational Only

Brief Summary: In January 2012, EPC staff brought the Agency's Strategic Plan to the Board for approval. It included some sixteen individual initiatives which are detailed in measurable action plans. The fourth quarter (year-end) status reports and final evaluations are listed for all sixteen action plans for 2012's Strategic Plan.

Financial Impact: No Financial Impact

Background: As part of the Agency's Sterling Management planning process, staff held a strategic planning retreat in December 2011. This included input from the Board and a broad range of EPC staff. Also taken into consideration were the most recent Employee and Customer Surveys.

Following the retreat, staff drafted a Strategic Plan for 2012 and brought it to the Board at the regular EPC meeting. It was approved and sixteen initiatives reflecting the Agency's strategic objectives were launched. Each initiative is described in an Individual Action Plan with measurable goals. The attachments reflect the final evaluation of the completed 2012 action plans.

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: Nutrient Management Initiative 1.1	
Action Plan Owner: Sam Elrabi	Date Completed: December 2012 (In progress)
Proposed Success Measures:	
<ul style="list-style-type: none"> • Monitor reduction of Nutrient Loading to Surface Waters of the County • Track Biological responses & Environmental conditions in Surface Waters 	Final Outcome: <ul style="list-style-type: none"> • Adopted Residential Fertilizer Rule in July of 2010 • Developed Training Database & disseminated public education materials for Fertilizer Rule implementation (on going) • Implemented a Fertilizer Rule efficacy study (well underway) • 2012 WQ data shows all 4 Bay segments meeting Chlorophyll-a Targets • Continue partnering with stakeholders on Nutrient Management issues (TMDLs, NNC, impairments & BMAPs) - ongoing
Additional Owner Comments:	
The work under this Action Plan has a Long-Term nature as it deals with a multi-year study & evaluation of Residential Fertilizer application. It also has a component of partnering with stakeholders (public & private, local & state) on surface water impairment which is a decadal issue of collaborative nature.	
Recommended Follow-up:	
Continue this Action Plan in the 2013 cycle.	

Final Evaluation of Completed 2012 Action Plans

<p>Action Plan Title and ID Number: Develop Office of Sustainability 1.2</p>	
<p>Action Plan Owner: Jerry Campbell</p>	<p>Date Completed: December 2012</p>
<p>Proposed Success Measures: Secured Funding for FY12 Coordinator's Position Complete Energy and Sustainability Plan for County Received Grant for 7 Electric Vehicle Charging Stations CNG Committee to meet with 3 suppliers and prepare RFI in the fall Green Hillsborough website updated Signed Agreement with Patel and TECO to establish Clean Cities Coalition Purchase Chevy Volt and order a second electric vehicle</p>	<p>Final Outcome: Complete County to consider energy reduction goal with expansion of Energy Management Teams – Presentation ready to go to County Executive Team All 7 stations installed and operational Meetings complete with suppliers and RFI was completed and collected information now under review Green Website has been restored with links on both the EPC and County website/ EPC maintains website Clean Cities Coalition is underway with activities and will aim to submit for designation in late 2013 EPC has received Chevy Volt and has a Nissan Leaf on order for delivery in February 2013. EPC backlot charging station also installed for these vehicles</p>
<p>Additional Owner Comments:</p>	
<p>Need to maintain momentum for initiatives through County Workgroup on Energy Management and Sustainability</p>	
<p>Adoption of County Energy Reduction Goal will aid in momentum</p>	
<p>Recommended Follow-up:</p>	
<p>Watch for grant opportunities, especially in alternative fuel arena</p>	
<p>Continue to help with success of Clean Cities Coalition</p>	
<p>Office of Sustainability will keep Green Hillsborough updated with Elaine's help</p>	

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: 1.2 Green Initiatives	
Action Plan Owner: Hooshang Boostani	Date Completed: November 2012
Proposed Success Measures: <ul style="list-style-type: none"> • Increased recycling • Expansion of recyclable list • Reduction of energy consumption • Energy Star Certification 	Final Outcome: <ul style="list-style-type: none"> • Office recycling is increased due to increased staff participation • List of recyclable items has been expanded (single stream recycling) • A 6% decrease in energy consumption since 2011
Additional Owner Comments: Completion of the chiller plant in October 2012 will result in further reduction of power consumption. The symbolic "Green Wall" was installed in the lobby of RPS in November 2012.	
Recommended Follow-up: Beginning in the first quarter of 2013, the Green Team will initiate the application process for Energy Star Certification. A separate Action Plan will be developed for this initiative.	

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: 1.2 School Outreach		Date Completed: Not Completed
Action Plan Owner: Hooshang Boostani		
Proposed Success Measures: Creating a traveling environmental display for use in Hillsborough County schools. Have it completed and in the schools by September, and have it visit one school a month until year's end.		Final Outcome: The display is still being completed by County Communications and permission to take it into the schools is still in process.
Additional Owner Comments:		
Staff took advantage of our contract with Communications to produce a first rate display using their professional expertise. It is under development and should be completed shortly.		
The School District has formalized their procedures for allowing any material in the schools (even for display purposes). Staff is working through them and may have to appear at a School Board meeting to get approval.		
Recommended Follow-up:		
Continue to work with Communications to complete the display and work with the School Administration to get approval to display it in the public schools.		

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: 1.3 Lakes Initiative	Date Completed: December 2012
Action Plan Owner: Scott Emery, Ph.D.	
Proposed Success Measures: Monthly reporting to EPC Board and # of citizen concerns addressed.	Final Outcome: EPC Board power point presentation template was created and presented to EPC Board in February, March, May and September. Several important citizen concerns were addressed, including water quality, water transfer, minimum flows and levels, the effects of groundwater withdrawal, flooding, etc.
Additional Owner Comments: The EPC Board received the Lakes Initiative with great interest. Data obtained indicates that relatively few organized Lake Owners Associations exist.	
Recommended Follow-up: Continue presenting important Lakes issues to EPC Board on an as needed basis. Continue to maintain/enhance info exchanges with outside agencies. Need to work on ways to share presentations with lakefront property owners, HOA's and LOA's.	

Final Evaluation of Completed 2011 Action Plans

Action Plan Title and ID Number: 2.1 IDP & Supervisor Training	
Action Plan Owner: Hooshang Boostani	Date Completed: December 2012
Proposed Success Measures:	
Reach a minimum of 8 hours training/development time per staff persons. Additionally the rating on the employee survey increased from 47% to 57%.	Final Outcome:
	Training needs were assessed for future budget planning by surveying staff for training needs. Training completed has been entered into a database and the database will be used in the future to track completed training hours by training type. An IDP was created specifically for EPC utilizing the expertise of and industrial/organizational psychologist. Mandatory workshops were held to inform all staff of the development tool available to them and how to use it.
Additional Owner Comments:	
Senior Staff has made the IDP available across the agency by holding the mandatory IDP training workshops.	
The training database allows the staff to print a report of their completed training and outreach to their supervisors and Dr. Garrity during annual review which will make the training more meaningful as well as integrate it with staff performance.	
Recommended Follow-up:	
Originally the action plan suggested using the results from the employee survey as the means for judging success in this area. The success measure has been updated but the employee survey results should be taken into account as well; an increase from the existing 57% should be expected.	
In order to ensure that the database is useful, which will be the tallying means for the success measure, all supervisors and senior management must be adamant that the process of bringing training history reports into the review process has to be required for all staff.	
The committee originally was tasked to look for funding opportunities for training. The committee should discuss whether this is an appropriate function of the committee going forward.	
At some point a means for tracking how many persons have use or are using the IDP should be created.	

Final Evaluation of Completed 2012 Action Plans

<p>Action Plan Title and ID Number: Action Plan 2.2a Improve Employee Satisfaction - Develop Incentive Pay Programs</p>	<p>Date Completed: February 3, 2012</p>
<p>Action Plan Owner: Rick Miratti</p>	<p>Final Outcome: EPC worked on two policies, as noted below.</p>
<p>Proposed Success Measures:</p> <ol style="list-style-type: none"> 1) Draft a monetary incentive policy by February 20, 2012. 2) 100% of employees receive notice of final monetary incentive policy. 3) Track employee survey question #3 regarding "connection between pay and performance" to see if responses are positive. 	<ol style="list-style-type: none"> 1) Extraordinary Performance Increase Policy. General guidance on extraordinary performance increases was converted to a policy and the policy was finalized and implemented on February 3, 2012. At least one employee was granted such an increase shortly thereafter. Task completed before the deadline. 2) Annual Performance Incentive Policy. Legal drafted an EPC specific annual lump sum performance incentive policy to replace the rescinded County-wide longevity bonus, but the draft policy has been put on hold until the County develops a policy; this will ensure consistency. On 8-14-12 County staff explained that in the short term the \$1500 one-time payment provided in November to each employee for FY13 will address this issue. County staff said they would revisit a plan in the future. Task on hold.
<p>Additional Owner Comments:</p> <p>Initially the goal was to have annual lump sum performance incentive policy to compliment the extraordinary performance increase policy and preset the annual lump sum performance incentive policy to the EPC executed by December for execution. Based on the \$1500 payment there was not an urgency this year to create an annual incentive program by County staff and the County is not drafting a policy. On 9-26-12 EPC Executive Director confirmed this will stay on hold until County creates an annual program.</p>	
<p>Recommended Follow-up:</p> <ol style="list-style-type: none"> 1) If management still wants to pursue the annual lump sum performance incentive policy, then we either have to confirm we have the budget and desire to do it on our own or just wait for the County to take the lead. 2) Issue extraordinary performance increases more frequently (two a year??) to show incentives exist. 3) Staff should track employee survey question #3 regarding whether there is a "good connection between pay and performance" to see if responses are positive and compare those response to surveys prior to the extraordinary merit policy being implemented (Feb. 2012). Pre-policy data shows employees rate Q#3 at 2.1 out of 4 in 2011. In 2009 the response was around 2.25. 	

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: Prepare Sterling Challenge Application (Strategic Objective 2.3)	
Action Plan Owner: Rick Garrity	Date Completed: Still Underway
<p>Proposed Success Measures: Timely completion of a Sterling Challenge Application with Strategic Plan, Organizational profile, and Sterling Category Analyses</p>	<p>Final Outcome: The Challenge Application is under development. The Strategic Plan and Organizational Profile have been drafted and are under review as part of our annual planning process in preparation for Action Plan updating. Sterling Category analyses are ongoing with Categories 1-3 complete, Category 4 in drafting, and Category 5 underway. Categories 6-7 will be completed in 2013 on a timetable that should allow full Action Plan completion by early fall or sooner.</p>
Additional Owner Comments:	
<p>Although the completion date for this Action Plan called for a December 2012 finish, conducting the Sterling category analyses proved more time consuming than anticipated and staff turnover was a factor in delays. However, the analyses are now on a good timetable for completion in 2013. EPC Executive Team held a meeting with the Florida Sterling Council management and our Sterling Consultant and we were encouraged to submit a Challenge document by March 2013. In the next few months we will evaluate whether this is doable.</p>	
Recommended Follow-up:	
Stay in contact with the Florida Sterling Council management team regarding time frames for Challenge submittal.	

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: Rule Efficiency Initiative 3.1	Date Completed: December 2012
Action Plan Owner: Sam Elrabi	
Proposed Success Measures: <ul style="list-style-type: none"> An overall reduction of obsolete, outdated, and vague EPC Rules 	Final Outcome: <ul style="list-style-type: none"> Completed the updating, clarifying and cleaning-up of 8 of EPC's Rules spanning the Air, Water, Waste, Legal/Administrative Divisions Final Adoption by EPC Board was in August 2012
Additional Owner Comments:	
This was a very involved action plan with intense debate and a worthy outcome.	
Recommended Follow-up:	
Keep track with FDEP rule changes and update our adopted rules by reference accordingly.	

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: 3.2 One Stop Permitting	Date Completed: December 2012
Action Plan Owner: Scott Emery, Ph.D.	
Proposed Success Measures: Increase in local delegated permits issued; increased duties per existing/new MOU's; decreased processing time for customers.	Final Outcome: EPC received partial FDEP ERP delegation in February 2012, to date (2-1-12 thru 12-4-12) 215 of these delegated projects have been reviewed by EPC. The one stop permitting of these 215 reviews reduces the processing time for customers by eliminating the need to apply to FDEP, which saves them time, gas, consulting fees, and review fees. An estimated saving of \$250 per review = \$53,750 for our customers. All specific actions of this action plan have been completed, pending 6 and 7.
Additional Owner Comments: In addition to the 215 delegated reviews conducted during this period, the foundation for further delegation/MOU work from SWFWMD and FDEP has been established. The agreements and details have not been finalized but the goal is to work toward Environmental Recourse Permitting, Formal Wetland Determinations, and other Wetland Assessment duties.	
Recommended Follow-up: Complete specific actions 6 and 7 and apply for additional SWFWMD and FDEP delegation/MOU duties. Extend deadline for specific action 7 to June 2013 to meet effective implementation schedule.	

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: Enhanced Priority Permitting	
Action Plan Owner: Jerry Campbell	Date Completed: December 2012
<p>Proposed Success Measures:</p> <p style="text-align: center;"><u>Measure</u></p> <p>Held Coordinating Meetings with Outside Permitting Agencies</p> <p>Percent of Priority Applications Processed in < Half the Statutory Time</p> <p>Percent of Priority Applicants with Customer Survey at 4.0 or Better</p> <p>Improve Transparency On-Line</p>	<p>Final Outcome:</p> <p style="text-align: center;"><u>Result</u></p> <p>4 – City of Tampa, City of Plant City, City of Temple Terrace, DEP SW District Office</p> <p>89% (8 of 9)</p> <p>100% (7 of 7)</p> <p>Maintain Agency Permit Tracking System & Input Data in County's Accela Automation</p>
<p>Additional Owner Comments:</p> <p>Need to have follow up meetings with the municipalities and DEP to keep the momentum going.</p> <p>Surveys drive the service and that is a good thing.</p> <p>Accela will be used to display information in the County system, but will not be used to drive the process.</p>	
<p>Recommended Follow-up:</p> <p>Do a better job advertising the Agency's Permit Tracking System.</p>	

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: #4.1a Grant Acquisition		Date Completed: 6/1/2012	
Action Plan Owner: Laura Thorne			
Proposed Success Measures:			
Percent of grants applied for vs grants awarded.			
	2009	2011	2012
	Applied	Awarded	Applied
Air	1	0	0
Waste	0	0	1
Water	1	3	0
Wetlands	1	1	0
Admin	4	4	1
	25%	50%	100%
Additional Owner Comments:			
The three major deliverables from this action plan are the Grant Guidance Document, the Potential Project list, and an updated policy. The Guidelines are on the intranet and the Potential projects are posted on the webpage.			
Recommended Follow-up:			
The grant committee should meet quarterly and as-needed to make sure that the items created are still valid, to share info about available grants, potential projects, SOP's, etc.			

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: 4.2a Employee Efficiency Team (n.k.a. Employee Efficiency Procedures)	Date Completed:	
Action Plan Owner: Mike McKelvey		
Proposed Success Measures: Achieve a \$5,000 target reduction in personnel and/or operating costs through employee generated ideas within 12 months.	Final Outcome: The concept of an employee efficiency team was scrapped in favor of a procedure. Just this month an Employee Efficiency Procedure was promulgated on the Agency's intranet site. It has yet to be promoted to employees. Thus there have been no dollar savings to date as a result of this Action Plan.	
Additional Owner Comments:		
Procedures were approved in September 2012. Posting to Intranet homepage was completed in December 2012. It provides a mechanism for employees to submit money saving ideas with recognition through the Agency. It also directs employees to an existing County productivity program BOCC Policy 07.11.00.00 which can result in monetary awards to employees.		
Recommended Follow-up:		
Promote this written procedure to employees at the next in-service meeting in early 2013. Track the savings which result from this initiative and report it back through the strategic plan and Senior Staff by December 2013.		

Final Evaluation of Completed 2012 Action Plans

Action Plan Title and ID Number: Agency Performance Measures 5.1	Date Completed: December 2012																		
Action Plan Owner: Jerry Campbell																			
Proposed Success Measures:																			
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;"><u>Core Function</u></th> <th style="text-align: left; border-bottom: 1px solid black;"><u>Goal</u></th> </tr> </thead> <tbody> <tr> <td>Delegated Permits</td> <td><36 days in house</td> </tr> <tr> <td>Local Permits</td> <td><28 days in-house</td> </tr> <tr> <td>Timely Compliance</td> <td>>90 %</td> </tr> <tr> <td>Timely Complaints</td> <td>>99%</td> </tr> <tr> <td>Timely Enforcement</td> <td>>67%</td> </tr> </tbody> </table>	<u>Core Function</u>	<u>Goal</u>	Delegated Permits	<36 days in house	Local Permits	<28 days in-house	Timely Compliance	>90 %	Timely Complaints	>99%	Timely Enforcement	>67%	Final Outcome: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;"><u>Result</u></th> </tr> </thead> <tbody> <tr> <td>36 days</td> </tr> <tr> <td>22 days</td> </tr> <tr> <td>91%</td> </tr> <tr> <td>99%</td> </tr> <tr> <td>61%</td> </tr> </tbody> </table>	<u>Result</u>	36 days	22 days	91%	99%	61%
<u>Core Function</u>	<u>Goal</u>																		
Delegated Permits	<36 days in house																		
Local Permits	<28 days in-house																		
Timely Compliance	>90 %																		
Timely Complaints	>99%																		
Timely Enforcement	>67%																		
<u>Result</u>																			
36 days																			
22 days																			
91%																			
99%																			
61%																			
Additional Owner Comments:																			
<p>Average time to process delegated and local permits is close to the zero return point. What we should start looking at is outliers which run more than 90 to 180 days.</p> <p>Timely follow up on compliance and complaints meets strict Agency guidelines for the most part, but we can do a better job communicating with the respondent and the citizens. If they don't hear from us they assume we have forgotten about them.</p> <p>We should do better on the timely enforcement criteria. We are still clearing out old cases which count against us.</p>																			
Recommended Follow-up:																			
<p>Consider an Action Plan which prevents applications from being on the books for over 180 days.</p>																			

Final Evaluation of Completed 2012 Action Plans

<p>Action Plan Title and ID Number: Action Plan 5.2.c Virtual Servers and Desktops (Bricks)</p>	
<p>Action Plan Owner: Shannon Parris</p>	<p>Date Completed:</p>
<p>Proposed Success Measures:</p> <p>1.a. Virtual Server hardware availability goal is equal to the industry standard of 99.9%.</p> <p>1.b. Virtual server cost savings to be realized by minimizing the number of physical servers required in support of agency.</p> <p>2.a. Virtual Desktop hardware availability goal is equal to the industry standard of 99.9%.</p> <p>2.b. Virtual Desktop (Bricks) cost savings to be realized by reducing machine costs.</p>	<p>Final Outcome:</p> <p>1.a. Previously not measured, but understood from experience to be less than 99.9%. Server hardware uptime availability during the past twelve month period was measured at 100%. Although there were some software and application related outages, the virtual hardware experienced none.</p> <p>1.b. The number of physical servers was reduced from twelve to three. No additional servers were purchased as part of this deployment. Cost savings estimated at \$54k by not replacing nine remaining servers.</p> <p>2.a. Virtual Desktop (Bricks) deployment was not completed in 2012. As a result, there were no performance measures available.</p> <p>2.b. Initial Virtual Desktop (Bricks) savings realized by reduced machine costs will be absorbed by the additional licensing requirements for both VMware and Microsoft. There will be an operational costs savings once deployment is completed and management of these systems begin.</p>
<p>Additional Owner Comments:</p> <p>This measurement is for Application Servers in the virtual environment only. The Virtual Desktop's have not yet been deployed. The Virtual Desktop server hardware has been purchased, deployed, and is currently being configured. Costs savings were realized with the deployment of the virtual servers, but not with the Virtual Desktops. Although the Virtual Desktop hardware is less expensive, the pricing for the licenses that we first received was inaccurate. Additional license costs drove the price up to be equal or slightly greater than that of a regular desktop computer. Although these costs are higher, it is believed that a savings will be realized by 1) reduced operational costs in the management of the Virtual Desktop environment, and 2) reduced licensing costs realized over time as competition drives down the prices in the marketplace.</p>	
<p>Recommended Follow-up:</p> <p>Continue to measure uptime for Virtual Servers. Deploy Virtual Desktops into production. Include uptime measurements for Virtual Desktops once they are deployed. Modify uptime measurement from 8760 hours to 525600 minutes, providing for a more accurate uptime measurement.</p>	

Final Evaluation of Completed 2012 Action Plans

<p>Action Plan Title and ID Number: Advanced Leadership Development Program (Strategic Objective 5.3)</p>	<p>Date Completed: 11/30/2012</p>
<p>Action Plan Owner: Rick Garrity</p>	<p>Proposed Success Measures: Increase staff satisfaction by providing mentoring and leadership development opportunities as mentioned in 2010 employee survey. Initiate Advanced Leadership Development Program (ALDP) by April 2011; 5% of staff completing ALDP in one year. Midterm surveys using a Likert scale questionnaire to be completed by each candidate. Exit surveys using a Likert scale form and open questions are to be completed by each candidate rating the program. Completion of a checklist detailing all required criteria items have been received by the ALDP committee.</p> <p>Final Outcome: Program requirements were established. Inaugural group of 6 applicants launched May 2011. Timeframe goal of 1 year was set to complete program requirements. Group 1 candidates have completed a majority of the core requirements; two members have finished the entire program. The remaining four applicants are in the final completion stages. All candidates met with the committee and the Executive Director twice to provide feedback in addition to completing a midterm & final survey evaluating the program. Modifications to the program were made based on feedback from Group 1, program changes were implemented for the second cohort. Group 2 launched May 2012, Group 3 scheduled to start January 2013.</p>
<p>Additional Owner Comments: Program modifications include reducing the number of participants, reducing the number of mentoring sessions,</p>	<p>Providing a checklist of program requirements at orientation, changed self evaluation test from MDQ & coach best to a 180 self assessment.</p>
<p>Duration to complete ALDP may extend up to 18 months. Individual development plan (IDP) mandatory for all program participants.</p>	<p>Tax collectors classes like in kind may be permitted to be substituted for the core class requirements.</p>
<p>Recommended Follow-up: Continue midterm and exit evaluation surveys, look for new opportunities to partner with other agencies for training classes, ALDP committee meet annually with Executive Director to review surveys, and evaluate the program for improvement opportunities.</p>	

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: January 17, 2013

Subject: Final Order Hearing regarding the Medero vs EPC dock permitting appeal (EPC Case No. 12-EPC-005)

Agenda Section: Regular Agenda

Division: Legal and Administrative Services Division

Recommendation: Conduct a Final Order Hearing to consider and take action on the Hearing Officer's Recommended Order.

Brief Summary: Appellants Richard and Susan Medero reside on a canal in Apollo Beach and they applied to the EPC for a dock expansion permit. The application to construct the dock expansion was denied based on Tampa Port Authority rules (administered by the EPC) regarding navigational hazards presented by the size and location of the proposed dock expansion. The Medero's challenged the denial and an administrative hearing was conducted on October 30, 2012. The presiding Hearing Officer issued a Recommended Order on December 13, 2012, overturning the denial and granting authorization to the Mederos to construct the dock expansion as proposed. The Commission must now sit in a quasi-judicial capacity to affirm, reverse, or modify the Hearing Officer's Recommended Order through either the issuance of a Final Order or a remand back to the Hearing Officer for additional findings. The EPC Executive Director's legal counsel will present argument as to why the Commission should deny the application or remand the case. The Medero's will present argument as to why the Commission should affirm the Recommended Order. Each side has ten minutes to argue their case.

Financial Impact: No Financial Impact

Background: The Environmental Protection Commission was delegated the marine construction permitting authority from the Tampa Port Authority (TPA) and the EPC routinely processes dock permit applications on behalf of the TPA and the FL Department of Environmental Protection as part of our streamlined permitting program. Appellants Richard and Susan Medero live on a canal in Apollo Beach and they applied to the EPC for authorization (a/k/a Minor Work Permit) to add a walkway and a 48 foot dock to an existing dock on their property. The dock expansion permit application was denied based on the TPA Submerged Land Management Rules that address navigation hazards. The EPC Executive Director found that the size and location of the proposed dock expansion was a navigational hazard. The Mederos challenged the denial and the case was assigned to an EPC hearing officer to conduct a Section 9 Appeal (administrative hearing) regarding whether the Mederos' permit denial should be upheld. In accordance with sections 1-2.33 and 1-2.34, Rules of the EPC, the hearing was conducted on October 30, 2012, and a Recommended Order (attached) was issued by the Hearing Officer on December 13, 2012, overturning the denial and granting authorization to construct the dock as proposed.

The EPC Executive Director has filed exceptions (attached) to the Recommended Order asking the Commission to remand the case for additional findings or to reverse the Recommended Order. The Mederos have filed a response (attached) to the EPC's exceptions, asking the Commission to affirm the Recommended Order. Pursuant to Section 9 of the EPC Act and Section 1-2.35, Rules of the EPC, the Commission must now sit in a quasi-judicial capacity to affirm, reverse, or modify the Hearing Officer's Recommended Order through issuance of a Final Order or remand

the case back to the Hearing Officer for additional findings. The Commission has been provided in this agenda item the Hearing Officer's Recommended Order, the EPC Exceptions to the Recommended Order, and the Mederos' Response to the Exceptions. Additionally, the Commissioners will be sent the hearing transcript for their consideration. The Commission should only consider documents in the hearing file and legal arguments presented to them at the Commission's Final Order hearing. No new evidence may be introduced or considered.

The EPC Executive Director's legal counsel will present argument as to why the Commission should deny the application or remand the case as outlined in the EPC's Exceptions. The Mederos will present argument as to why the Commission should affirm the Recommended Order as outlined in their Response. Each side has ten minutes to argue their case before the Commission. In the conduct of the hearing, prior to issuing a Final Order, the Commission will have an opportunity to ask questions of the parties and receive legal advice from the Commission attorney.

BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

RICHARD MEDERO and SUSAN MEDERO,

Appellants,

EPC Case No: 12-EPC-005

vs.

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,

Appellee.

RECOMMENDED ORDER
WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 30, 2012, upon due notice, a final hearing in the above-captioned matter was held in Tampa, Florida before Vanessa N. Cohn, Esquire, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter "EPC"), on Appellants', RICHARD MEDERO and SUSAN MEDERO (together, "Appellants") Notice of Appeal of the EPC Executive Director's Notice of Change of Agency Action, in which the Appellants were denied an application for a minor work permit for modifications to an existing dock on jurisdictional surface waters (hereinafter "Jurisdictional Lands") located in Hillsborough County, Florida. In their Notice of Appeal, the Appellants assert that the EPC Executive Director erred in denying the minor work permit to add a walkway and a 48 foot dock to an existing dock at Appellants' property located at 1024 Sago Palm Way, Apollo Beach, Florida (hereinafter "the Property"). Each party contends that the applicable standards of the Tampa Port Authority Enabling Act, Chapter 95-488, Laws of Florida, (hereinafter "TPA Enabling Act") and the Tampa Port Authority Submerged Lands Management Rules (hereinafter "SLM Rules"), adopted thereunder, support their respective positions.

APPEARANCES

For Appellants: Richard and Susan Medero
1024 Sago Palm Way
Apollo Beach, Florida 33572

For EPC Executive Director: T. Andrew Zodrow, Esq.
Florida Bar No. 80055
Environmental Protection
Commission of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619

STATEMENT OF THE ISSUE

The issue in this case is whether the Appellants have demonstrated reasonable assurance that the proposed dock structure complies with the TPA Enabling Act and the SLM Rules. More specifically, does the proposed dock structure comply with Rule Subsection V.A.3.a. (3), SLM Rules, wherein maximum structure extensions of a dock can be restricted based upon site specific circumstances regarding navigational safety and existing structures? In addition, whether the application should be denied based on a consideration of the intent and purpose of the SLM Rules to ensure the maximum benefit and use of Jurisdictional Lands for all citizens and to manage, protect, and enhance Jurisdictional Lands so that the public may continue to enjoy traditional uses, including, but not limited to, navigation, fishing and swimming; and to minimize conflicts between these uses. Subsection I.A. (3) and (4) of the SLM Rules. Finally, whether the proposed dock structure complies with Section 25(f) of the TPA Enabling Act, which provides that “no permit shall be issued for the proposed work unless it is found there is no impediment to navigation, there are no adverse effects on the rights of riparian owners in the area, and there is no adverse effect on public safety to the extent as to be contrary to the public interest.”

PRELIMINARY STATEMENT

On September 7, 2011, pursuant to the Amended and Restated Interlocal Agreement between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County ('EPC') dated June 23, 2009 (hereinafter "TPA Delegation Agreement"), the Appellants submitted to the EPC Executive Director an application for a Minor Work Permit for modifications to a dock on Jurisdictional Lands adjacent to the Property (the "Application"). The Application was initially approved by the EPC on November 7, 2011, and a permit was issued (the "Permit"). After the Permit was issued, two area residents (the "Area Residents") timely submitted administrative appeals, or formal Requests for Extension of Time to file administrative appeals, challenging the Permit. Subsequently, on February 10, 2012, prior to the Permit becoming a final agency action, the EPC Executive Director revoked the Permit and denied the Application. The Appellants then filed this appeal challenging the revocation of the Permit and denial of the Application. As a result, an administrative hearing was held on October 30, 2012, in Tampa, Florida, to formulate final agency action on the Appellants' application for marine construction activities in jurisdictional waters under the TPA Enabling Act and the SLM Rules.

The parties ordered a transcript of the final hearing and the parties were given fifteen (15) days from the date of filing of the transcript in which to file proposed recommended orders and argument. Transcript Page Numbers 130 and 131, Lines 15-4, hereinafter cited as (Tr. pgs. XX, lines XX). The transcript was filed on November 9, 2012 and, by agreement of the parties, the due date for proposed recommended orders was established as November 26, 2012. The EPC Executive Director's Proposed Recommended Order and the Appellant's Proposed Recommended Order were timely filed on November 26, 2012.

WITNESSES AND EXPERTISE

The EPC Executive Director called the following witnesses: Kelly Holland, who was accepted as an expert witness in the “application of the Tampa Port Authority’s Submerged Lands Management Rules and the Port’s Enabling Act, Chapter 95-488, Laws of Florida.” (Tr. Pg. 17, lines 10-15; Tr. Pg. 18, lines 20-22); Scott Emery, who was accepted as an expert witness in the “application of the Tampa Port Authority Submerged Lands Management Rules and the Enabling Act.” (Tr. Pg. 70-71, lines 22-7); and Henry Atkins, who was accepted as an expert witness in “navigation of a 40-foot sailboat and vessel navigation.” (Tr. Pg. 88, lines 15-18; Tr. Pg. 90, lines 4-7). Mr. Atkins is also one of the Area Residents who felt that his rights were affected by the Permit. (Tr. Pg. 88, lines 19-23; Tr. Pg. 99, lines 18) and who filed an administrative appeal challenging the Permit. Appellant Richard Medero testified on behalf of the Appellants during the evidentiary hearing.

EXHIBITS

There were two joint exhibits entered into evidence, the Permit Application File and the Executive Director’s Notice of Change of Agency Action. The EPC Executive Director entered five exhibits into evidence. The Appellants entered one exhibit into evidence.

FINDINGS OF FACT

1. The Appellee EPC is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495 (the “EPC Act”), and the rules promulgated thereunder (the “EPC Rules”). (Page 8 of the Joint Pre-hearing Stipulation of the parties dated October 15, 2012, hereinafter “JPHS”, pg. 8)

2. Appellants own and reside at the Property (JPHS, pg. 8; Tr. Pg. 21, lines 10-13).
3. The Property is an upland riparian property adjacent to a canal under marine construction regulatory authority identified as "Jurisdictional Lands" of the Tampa Port Authority. (Tr. Pg. 21, Lines 18-22).
4. The Appellants have standing in this proceeding. (JPHS, pg. 8).
5. The EPC initially issued the Permit to the Appellants on November 7, 2011, for modifications to an existing dock located at the Property which modification consisted of the additions of a walkway and a 48 foot dock. (JPHS, pg. 8; Tr. Pg. 22, lines 21-24).
6. The Area Residents, then, timely filed challenges to the Permit in the form of a Notice of Appeal and a Request for Extension of Time to challenge the agency decision. (Joint Exhibit 1; EPC Exhibit 4, Keenan's appeal; Tr. Pg. 30, line 2-20; Tr. Pgs. 101-102, lines 25-2) and asserted potential adverse impacts on navigation and on the rights of riparian owners in the area. (JPHS, pgs. 8-9; Tr. Pg. 30, lines 5-8; Exhibit 4).
7. Prior to the Permit becoming a final agency action, the Executive Director, on February 10, 2012, gave notice of his intent to change the Agency's action with respect to the Permit. (JPHS, pg. 9; Joint Exhibit 2).
8. A dock currently exists at the Property. (JPHS, pg. 9).
9. The dock, with the modifications as proposed in the Application, would extend out 48 feet from the Appellants' shoreline. (JPHS, pg. 9; Tr. Pg. 24, lines 6-8; Joint Exhibit 1).
10. The Property is located in a T-shaped canal consisting of Valley Canal, the major canal, and Liga Canal, a dead-end canal. (Tr. Pg. 81, line 12-18; EPC Ex. 3).
11. On the south and west side sides of the Property corners, Valley Canal and Liga Canal are an estimated at 100 feet in width. (JPHS, pg. 9; EPC Ex. 5).

12. The Property is located on a corner of the canal and the proposed structure would not extend out beyond twenty-five percent of the navigable width of the affected water body. Subsection V.A.3.a. (3), SLM Rules, provides that the structure may not extend out beyond twenty-five percent of the navigable width of the affected water body. The proposed dock meets this twenty-five percent of the navigable width of the affected body requirement. (JPHS, pg. 9).

13. A dock line is a line that seeks to average the location of docks in an area and used as a measure of the navigation conditions that can reasonably be expected in a given body of water. (Tr. Pg. 38, line 25; Tr. Pg. 39, line 1).

14. There are no specific regulations on how to draw a dock line. (Tr. Pg. 58, line 14).

15. It generally depends on who is drawing the dock line and on site specific conditions. (Tr. Pg. 42, line 14-15; Tr. Pg. 57, lines 6-9).

16. The dock line advocated by the EPC follows the curvature of the land. (Tr. Pg.27, lines18-19; EPC Ex. 3).

17. The proposed dock structure is not within the dock line if the line is made to follow the curvature of the land. (Tr. page 38 line 9 & 25; page 42, line 15).

18. The dock line advocated by the Appellants continues on a straight line, as opposed to the curvature of the land, and is allowed to intersect and square off. (Tr. Pg. 53, lines 20-25; App. Ex. 1).

19. The proposed dock structure is inside the dock line advocated by the Appellants. (TR. Pg. 55, lines 5-8; App Ex.1).

20. The dock line advocated by the Appellants is the line originally, directly or indirectly, used by the EPC in its initial analysis leading to the issuance of the Permit (Tr. Pg. 28.

line 19-25; Tr. Pg. 29, line 8; Page 57, lines 16-23; Tr. Pg. 65, lines 19-25; Tr. Pg. 65, line 1; Tr. Pg. 71, line 25-25).

21. A vessel typically cannot be turned at a 90 degree angle while under speed and boaters under speed often follow the arc of the shoreline. (Tr. Pg. 72, Lines 1-9; Tr. Pgs 105-107, lines 16-6).

22. The speed in the area of the proposed dock is a low speed or wake zone (Tr. Pg. 54, line 14).

23. The speed restrictions, as well as the dimensions of the canals, limit the recreational activities suitable for the area of the proposed dock. (Tr. Pg. 74, lines 6-20; Tr. Page 76, lines 15-20).

24. Given the width of the Valley Canal and Liga Canal on the south and west side sides of the Property, and the distance of the existing docks along the shorelines on the Valley Canal and Liga Canal, vessels traveling on the Valley Canal and Liga Canal would typically travel on a straight line in the center of the canal. (Tr. Pg. 56, line 9-17; Tr. Pg. 53, line 15-25; Tr. Pg. 54, line 1-2. App Ex. 3).

25. Generally, without considering site specific factors such a speed and width, a dock-line that follows the curvature of the shoreline is easier to navigate than a dock-line with a turn at a 90 degree angle (Tr. Pgs. 17-18, lines 25-4; Tr. Pg. 20, lines 3-12).

26. The dock-line used should consider the likelihood of a vessel being "surprised" by a dock extending out beyond the distance of the existing docks along the shoreline. (Tr. Pg. 53, lines 7-14).

27. Given the width of the canals, the location of existing docks, applicable speed restrictions, and other site specific factors, vessels traveling in the area should not be surprised by the proposed dock. (Tr. Page 56, lines 13-17).

28. Given the location of docks in the canals, width of the water body surrounding the proposed dock, and speed restrictions in the surrounding areas, the proposed dock would not materially narrow the width of navigable waterways in the area, or present an impediment to navigation. (Tr. Pg. 72, lines 3-5; EPC. Ex. 3).

29. Given the existing speed restrictions, as well as the uses of the canals, the proposed dock would not adversely affect the rights of riparian owners by materially restricting the use of the riparian waterways adjacent and surrounding the dock, or interfere with the use and navigation of adjacent property owners' boats. (Tr. Pg. 55, lines 11-25; Tr. Pg 56, lines 1-17).

30. The proposed dock would not adversely affect visibility around the corner of the canals and related berthing area. (EPC Exhibit 4, Keenan's appeal pg. 3).

31. The proposed 48 foot dock in its proposed configuration is not contrary to the public interest. (Tr. Pg. 46, lines 14-20; Tr. Pg. 49, lines 1-5; Tr. Pg. 51, lines 4-11; Tr. Pg. 107, lines 14-25).

32. The proposed dock would not materially interfere with the public's ability to continue enjoying traditional uses, such as navigation, in the canal. (Tr. Pgs. 47-48, lines 10-3).

33. The total shoreline of the Appellants is 149.77 in length. Based on Section V.A.3.b(1), SLM Rules, for private single family docking facilities, the Appellants' structure or total preempted area may not exceed 1,498 square feet. The proposed dock also meets this rule requirement. (JPHS, pg. 9).

CONCLUSIONS OF LAW

1. The assigned Hearing Officer has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 9 of the EPC enabling act, Chapter 84-446, Laws of Florida, as amended (hereinafter "EPC Act"). The Hearing Officer's scope of review is to "determine all factual disputes relating to compliance with this act and rules and regulations promulgated pursuant to this act" under Section 6 of the EPC Act.

2. The Appellee is a local regulatory agency authorized to enforce the EPC Act and the Rules promulgated thereunder in Hillsborough County, Florida.

3. The EPC has jurisdiction over the Tampa Port Authority Enabling Act, Chapter 95-488, Laws of Florida, and the Tampa Port Authority Submerged Lands Management Rules (hereinafter "SLM Rules") pursuant to the Amended and Restated Interlocal Agreement between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County ('EPC') dated June 23, 2009 (hereinafter "TPA Delegation Agreement").

4. Pursuant to Section 1-2.33(d), Rules of the EPC, this administrative hearing is conducted as a *de novo* proceeding.

5. Pursuant to Section 1-2.33(d), Rules of the EPC, "[t]he burden of proof shall be on the Appellant to establish entitlement to a permit, order, authorization or exception allowed by the rules. Fact issues not raised by the Notice of Appeal shall be accepted as undisputed."

6. Subsection V.A.3.a. (3), SLM Rules, provide that maximum structure extensions of a dock, which are typically "twenty-five percent of the navigable width of the affected water body," can be further restricted "based upon site specific circumstances regarding navigational safety and existing structures." (JPHS, pg. 9 and 11).

7. Although the proposed dock meets the 25 percent of the navigable width of the affected water body requirement, the EPC should consider the existing dock lines of the docks previously constructed within the area when considering the site specific circumstances regarding navigational safety and existing structures under Subsection V.A.3.a.(3), SLM Rules.

8. Whether a dock line needs to follow the contour of the land, or may meet and square off, depends on site-specific circumstances including visibility, speed, existing structures, width and other site-specific circumstances regarding navigational safety under Subsection V.A.3.a.(3), SLM Rules.

9. The dock line of existing docks along the shoreline, shape of the canal, speed zone, and nature of the canals are appropriate site-specific circumstances regarding navigational safety and existing structures that should be considered under Subsection V.A.3.a.(3), SLM Rules, when evaluating the distance docks may extend out into a water body.

10. Pursuant to Subsection I.A. (3) and (4) of the SLM Rules, the intent and purpose of the Rules is to “insure [the] maximum benefit and use of Sovereignty Lands for all citizens” and “to manage, protect, and enhance Sovereignty Lands so that the public may continue to enjoy traditional uses, including, but not limited to, navigation, fishing and swimming; and to minimize conflicts between these uses.” (sic)

11. Pursuant to Subsection I.A. (3) and (4) of the SLM Rules, a dock structure may not materially affect the rights of riparian owners by restricting the riparian waterways adjacent and surrounding the dock; thereby, interfering with the use and navigation of adjacent property owners’ boats.

12. Section 25(f), Chapter 95-488, Tampa Port Authority Enabling Act, further states that no permit shall be issued for the proposed work, unless it is found there is no impediment to

navigation, there are no adverse effects on the rights of riparian owners in the area, and there is no adverse effect on public safety to the extent as to be contrary to the public interest.

13. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure does not materially impede navigation, adversely affect the rights of riparian owners, nor is it contrary to the public interest as identified in the Findings of Facts.

14. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure complies with the TPA Enabling Act and the SLM Rules.

15. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure will not create a navigation hazard based upon site specific circumstances regarding navigational safety and existing structures, specifically the location of the property in a T-shaped canal and the existing dock line.

16. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure would not be inconsistent with the intent and purpose of SLM Rules, which is “to manage, protect, and enhance Sovereignty Lands so that the public may continue to enjoy traditional uses” such as “navigation, fishing and swimming; and to minimize conflicts between these uses.” Subsection I.A. (3) and (4) of the SLM Rules.

17. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure would not be contrary to Section 25(f) of the TPA Enabling Act, which provides that no permit shall be issued for the proposed work, unless it is found there is no impediment to navigation, there are no adverse effects on the rights of riparian

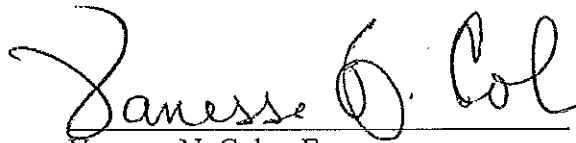
owners in the area, and there is no adverse effect on public safety to the extent as to be contrary to the public interest.

RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order upholding the Permit for the construction of a 48 foot dock on Jurisdictional Lands adjacent to Appellant's property, reflected in Permit issued on November 7, 2011

Respectfully submitted,

Dated: Dec 13, 2012



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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

RICHARD MEDERO and SUSAN MEDERO,

Appellants,

EPC Case No: 12-EPC-005

vs.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,**

Appellee.

**APPELLEE ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY'S
EXCEPTIONS TO RECOMMENDED ORDER OF ASSIGNED HEARING OFFICER**

The Appellee Executive Director for the ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPC) by and through his undersigned attorney, pursuant to Section 1-2.35, Rules of the EPC, hereby files exceptions to the Hearing Officer's Recommended Order dated December 14, 2012 and states as follows:

On December 14, 2012, the assigned Hearing Officer entered a Recommended Order in this case recommending that a Final Order be entered overturning the Executive Director's Notice of Change of Agency Action dated February 10, 2012 and upholding a Minor Work Permit for the construction of a 48 foot long dock extending out from Appellants' property located at 1024 Sago Palm Way, Apollo Beach, Florida (hereinafter "the Property").

The appropriate scope of review for a Hearing Officer's recommended findings of fact and conclusions of law is well established. Section 1-2.35, Rules of the EPC, provides that exceptions

shall be limited to challenge of the Hearing Officer's determination of facts with specific reference to evidence in the record or to challenge the Hearing Officer's application of the existing rules to the facts as found. The EPC shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the EPC shall not take any action which conflicts with or nullifies any provision of Chapter 84-446 or the rules adopted pursuant to the enabling act. This rule would also be applicable for Tampa Port Authority Submerged Lands Management Rules pursuant to Paragraph 7 of the "Amended and Restated Interlocal agreement between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County ('EPC') dated June 23, 2009." Section 1-2.35, Rules of the EPC, further provides that exceptions to conclusions of law are to be limited to the Hearing Officer's application of the existing rules to the facts as found.

Exceptions directed to Findings of Fact

The EPC Executive Director finds several errors in the Hearing Officer's Findings of Fact. Specifically, in Finding of Fact paragraph #22 the Hearing Officer finds that "[t]he speed in the area of the proposed dock is low speed or wake zone." [sic] The Hearing Officer relies on Transcript Page 54, line14 in support of this Finding of Fact.

The evidence that the Hearing Officer was relying on is a statement by the EPC employee witness Kelly Holland wherein he states "I *think* this is a no-wake area." (emphasis added) The witness' testimony is not competent evidence to support the finding because the witness merely believed the subject area is a no-wake zone but he was clearly not sure based on his use of the word "think." No competent evidence was presented regarding the true speed limits of vessels in this area

other than testimony about manatee signs near the entrance of the canals. Other than some testimony regarding “manatee signs” some distance away, there is no evidence in the record that supports the Hearing Officer’s finding about posted speed limits in the canals adjacent to the Property. (Transcript Page 109, lines 14-22) If the decision to allow the 48 foot long dock into the canal is based on the applicable speed limits within the canals, this matter should be remanded back to the Hearing Officer to determine the exact speed limit and what specific areas are under that speed limit.

In Finding of Fact Paragraph #30, the Hearing Officer finds that “the proposed dock will not adversely affect visibility around the corner of the canal and related berthing area. For this Finding the Hearing Officer relies on EPC Exhibit 4, Keenan’s appeal page 3. This is an Exhibit that was admitted into evidence in support of the Appellee’s argument, however, that document supports only the opposite conclusion. Note, the opposite conclusion regarding visibility in the canal is on page 4 of the exhibit rather than page 3 as identified by the Hearing Officer. It is possible that this Finding of Fact was incorrectly included in the Recommended Order. This Finding of Fact #30 is not supported by competent evidence in the record and thus Paragraph #30 should be rejected in a Final Order.

Exceptions directed to Conclusions of Law

Section 1-2.35, Rules of the EPC, provides that exceptions to Conclusions of Law are to be limited to the Hearing Officer's application of the existing rules to the facts as found. In addition, Section 1-2.35, Rules of the EPC, states the Commission shall not take any action in making its final order which conflicts with or nullifies any provision of Chapter 84-446 or the rules adopted pursuant to the Act. Again, this rule would also be applicable for Tampa Port Authority Submerged Lands

Management Rules pursuant to Paragraph 7 of the “Amended and Restated Interlocal agreement between the Tampa Port Authority (‘TPA’) and the Environmental Protection Commission of Hillsborough County (‘EPC’) dated June 23, 2009.”

The Conclusion of Law contained in the paragraph #8 of the Hearing Officer's Recommended Order is not supported by the Tampa Port Authority governing rules and Legislative Acts and should be overturned by the Commission. The Hearing Officer's interpretation of the use of the “dock line” under the applicable Tampa Port Authority Submerged Lands Management Rules is incorrect. The single most important question presented in this case is how far out into the canal the proposed structure may extend. The applicable Tampa Port Authority Submerged Lands Management Rules (“SLM Rules”) provide that maximum structure extensions of a dock, which are typically “twenty-five percent of the navigable width of the affected waterbody,” can be further restricted “based upon site specific circumstances regarding navigational safety and existing structures.” Subsection V.A.3.a.(3), SLM Rules. When considering the corners of two intersecting canals, the 25 percent rule is not appropriate to use for maximum extension into the canal based on the extreme increase in distance that results when measuring the width of the waterbody in the canal at a point along the curve or corner. This conclusion is demonstrated in the diagram attached hereto as Exhibit “A” which shows how the application of a 25 percent rule would cause navigational problems in the intersection of canals.

The next question presented is what are the appropriate site specific circumstances regarding navigational safety and existing structures that can be used to further restrict this distance in the canal. The Hearing Officer correctly identified the appropriate distance to use for the subject property is the “dock line” of the existing docks and structures in the area. The dock line is

calculated by measuring the distance other docks and structures along the shoreline presently extend out into the canal. The ultimate question then is how should the location of the “dock line” along the corner of two intersecting canals be determined? The question presented in this case is should the dock line follow the “contour or curvature of the shoreline” or may the dock line follow a 90 degree angle at the corner of the two intersecting canals?

In Conclusion of Law Paragraph #8, the Hearing Officer states that “[w]hether the dock line needs to follow the contour of the land, or may meet and square off, depends on site specific circumstances including visibility, speed, existing structures, width, and other site specific circumstances regarding navigational safety under Subsection V.A.3.a.(3), SLM Rules.” This Conclusion of Law #8 is incorrect and the rule should be interpreted to say, if the dock line is used as a site specific circumstance in lieu of the 25 percent maximum width requirement, then the dock line *must* follow the contour of the shoreline rather than “squaring off” at some farther distance out in the waterbody. The Hearing Officer acknowledges, and makes a Finding of Fact in Paragraph #17, that the proposed dock would be outside the dock line if the dock line follows the contour or curvature of the shoreline.

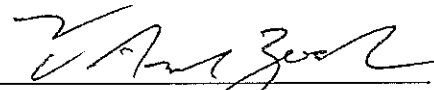
The ability to use some feature other than the contour or curvature of the shoreline for the “dock line” is inappropriate and would lead to potential problems associated with permitting structures in Jurisdictional Lands. For instance, in this particular circumstance the interpretation of the rule in this manner will allow for the construction of numerous hazardous protruding docks on all corner lots throughout Apollo Beach and similar canals in Hillsborough County as identified in the diagram attached hereto as Exhibit “B.” Many of these canals in Apollo Beach are essentially the same as the subject site and the application of a Final Order adopting the Hearing Officer’s

Recommended Order will result in each of these corner lots in Apollo Beach and similar areas having docks and other structures protruding into the canals much farther than the lots that are not located on corners. Attached hereto as Exhibit "C" is an aerial photograph of Apollo Beach that shows the similarity of the canals in the area. A Final Order adopting this Conclusion of Law #8 may cause significant future problems resulting from the structures that could be permitted in all similar canals in Apollo Beach and the rest of Hillsborough County.

CONCLUSION

Therefore, the EPC Executive Director requests that the EPC enter a Final Order upholding the denial of the subject application because the proposed structure is not within the appropriate dock line following the contour of the shoreline, as identified in Finding of Fact #17, and as required under Subsection V.A.3.a.(3) of the Tampa Port Authority Submerged Lands Management Rules. In the alternative, the matter should be remanded to the Hearing Officer to determine the applicable speed limits and re-evaluate the impact on navigation based on those speed limits.


Respectfully submitted this 21st day of December 2012.



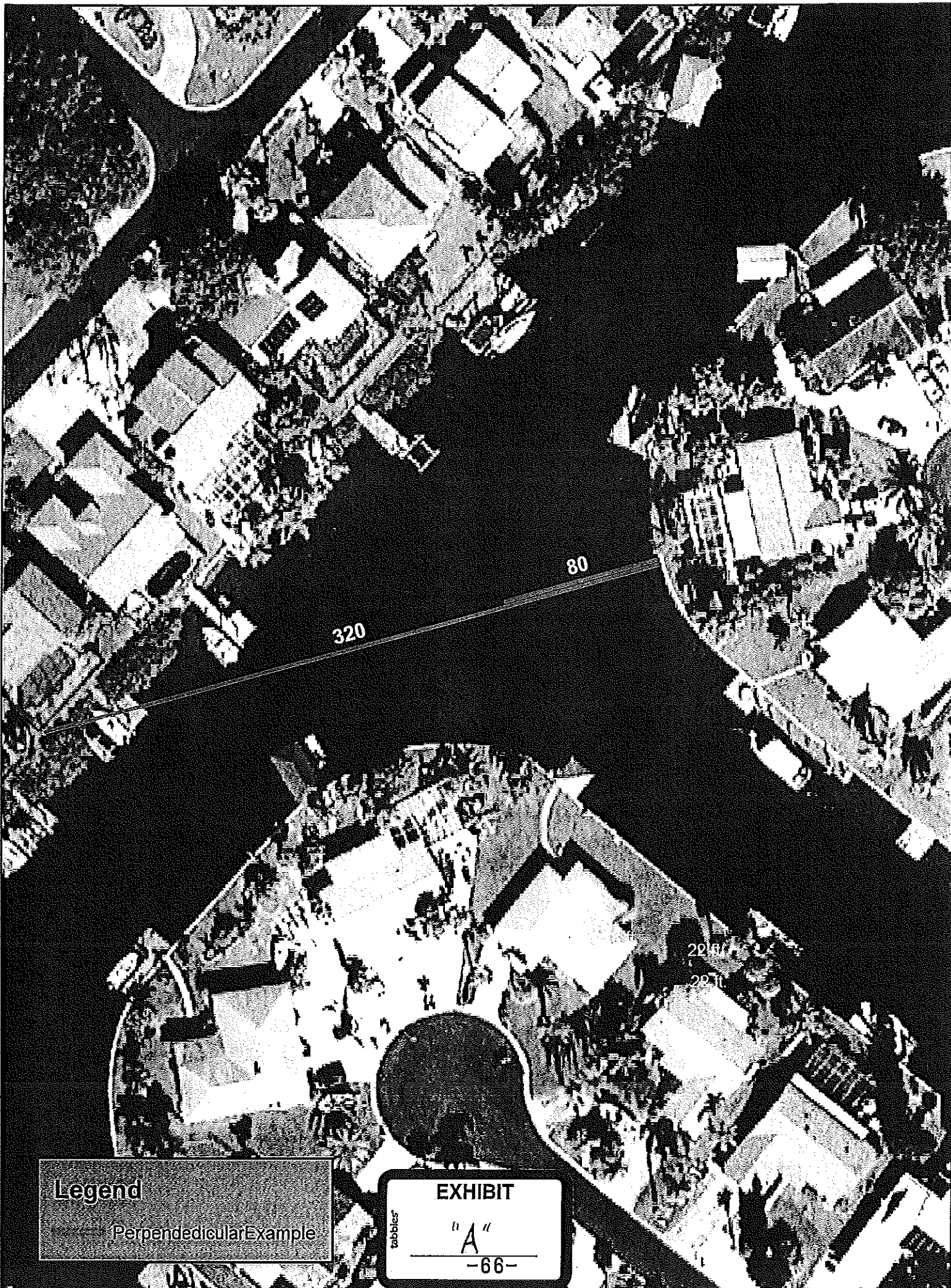
T. ANDREW ZODROW, ESQ.
Environmental Protection Commission
of Hillsborough County

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was sent via U.S. mail to **RICHARD MEDERO** and **SUSAN MEDERO** at 1024 Sago Palm Way, Apollo Beach, FL 33572 and via electronic mail; rmede@aol.com on this 21st day of December 2012.



T. Andrew Zodrow, Esquire
Environmental Protection Commission
3629 Queen Palm Drive
Tampa, FL 33619
Telephone: (813) 627-2600
Facsimile: (813) 627-2602
E-mail: zodrowa@epchc.org
Florida Bar No.: 0080055



320

80

22 ft

23 ft

Legend

Perpendicular Example

EXHIBIT

"A"

-66-

tabbles



Legend





-  DockLineExtension
-  Parcels_24.5ft_Buffer
-  MederoParcel_Buffer
-  paparcel

EXHIBIT
 "B"
 -67-

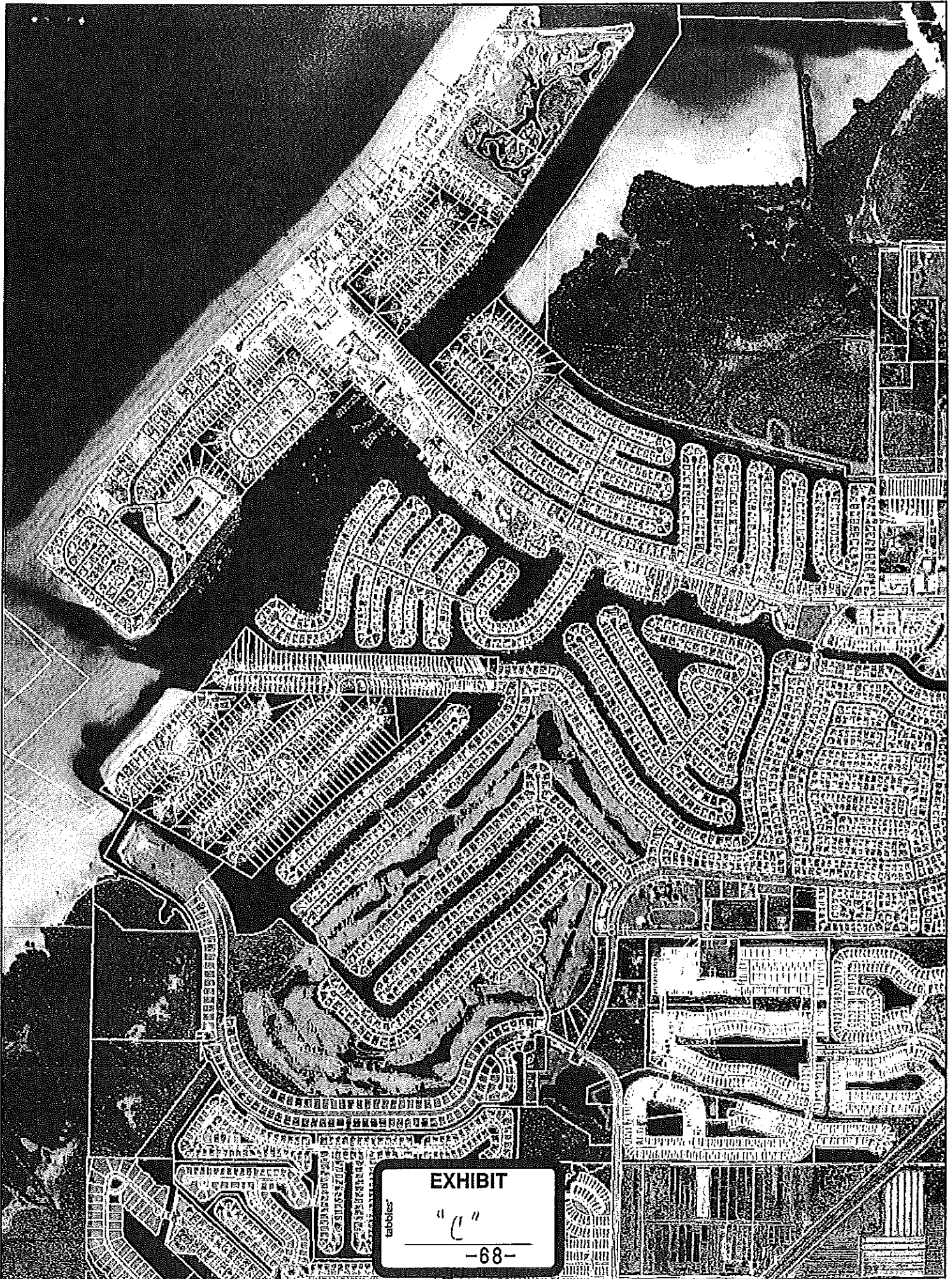


EXHIBIT
"C"
-68-

RICHARD MEDERO and SUSAN MEDERO,
Appellants, EPC CASE NO. 12-EPC-005

vs.

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
Appellee.

APPELLANT'S RESPONSE TO APPELLEE'S EXCEPTIONS TO THE RECOMMENDED
ORDER OF ASSIGNED HEARING OFFICER

Appellee's exceptions to finding of facts:

1. Speed limit

Vessel speed is limited to idle in the subject area by county ordinance 74-10 and 78-2. As noted in Mr. Medero's testimony (transcript page 109, line 21), there is a sign posted on the one and only entrance to the area. A photograph of that sign is included as exhibit #1a of this response. Vessels encountering an idle speed sign must not exceed idle speed until a sign allowing higher speed is encountered. No signs allowing higher speed exists other than one co-located with the idle speed sign at the entrance. This sign is posted to apply to vessels exiting the area and visible only while exiting the area. Exhibit #1b shows the location of these signs.

2. Visibility

The proposed dock will not decrease visibility more than the alternate dock design that the Appellee has suggested would be allowed (transcript page 124, line 5 to page 125 line 25). The Appellee fails to consider how the appellant's vessel will restrict visibility. Exhibit #2 of this response is a drawing of that alternate design with outline of vessel on face of dock.

Appellee's exceptions to conclusions of law

1. Statement that conclusion #8 is not correct

The Appellee does not point to any evidence that the conclusion is not correct. The conclusion correctly states that dock lines can be used to restrict the area where structures would be allowed and that the method used to determine the lines should depend on site specific circumstances.

2. Future permitting

Appellee's argument on page 4 associated with exhibit A of the exceptions fails to note that the extent of area where structures can be placed is limited by

appropriate application of dock lines as applied by the TPA and by the conclusion of law #8 in the recommended order. Exhibit #3 of this response indicates those limits. It is important to note that lengths of structures would be further reduced by the 25 percent rule.

Appellee's exhibit B of exceptions to the proposed order exaggerates the areas where structures might be allowed. Exhibit #3 of this response is the appellee's exhibit B redrawn to accurately represent the existing dock lines.

Appellant's general responses

Site specific circumstances should be considered in all applications for permit. In this case the permit should be allowed. Here are the pertinent site specifics:

1. Speed is limited to idle in the area by county ordinance 74-10 and 78-2. The East/West canal that joins the wider area where the proposed dock would be located is narrow, has no commercial traffic, has a dead end and is only 0.16 miles in length, all further reducing the likelihood that a vessel would be operating at higher than idle speed.
2. The proposed dock will not extend further than the lines project along the existing docks, therefore it does not create a hazard to vessels traveling on those lines. Exhibit #4 of this response shows drawing of proposed addition to existing dock and existing dock lines.
3. The proposed dock will not impede navigation or safety. Analysis by the Tampa Port Authority states the proposed dock will not result in an impediment to navigation or safety. This analysis is included in joint exhibit 1 entered as evidence at the hearing and referred to in the transcript page 28 line 19 to page 29 line 8. It is also included here as exhibit #5

Applying the Appellee's interpretation of a dock line at intersections of canals will result in infringing on the rights of property owner such as appellant. There are numerous examples of existing docks that would not comply with the appellee's application of dock lines. The EPC has had this permitting authority for only a short time. Prior to the EPC assuming permitting responsibility, the TPA was the agency responsible and it is the TPA that used an objective analysis showing the proposed design would not result in impediments to navigation or safety. The EPC should refrain from infringing on property owner's rights until the EPC's staff has developed the skills necessary to perform objective analysis such as that done in this case by the TPA. Until the EPC acquires these skills, the EPC should rely on the TPA's analysis.

If it is determined that the EPC's restrictive dock line rule will be applied going forward. The rules should then be amended to clearly state these new rules. The Appellant's decision to purchase the subject property and the EPC granting of the permit for the proposed design where based on the existing rules; therefore the permit should remain valid.

Respectfully submitted this 28th day of December 2012.

Richard and Susan Medero
Appellants

Exhibit #1a



Exhibit #1b



Exhibit #2

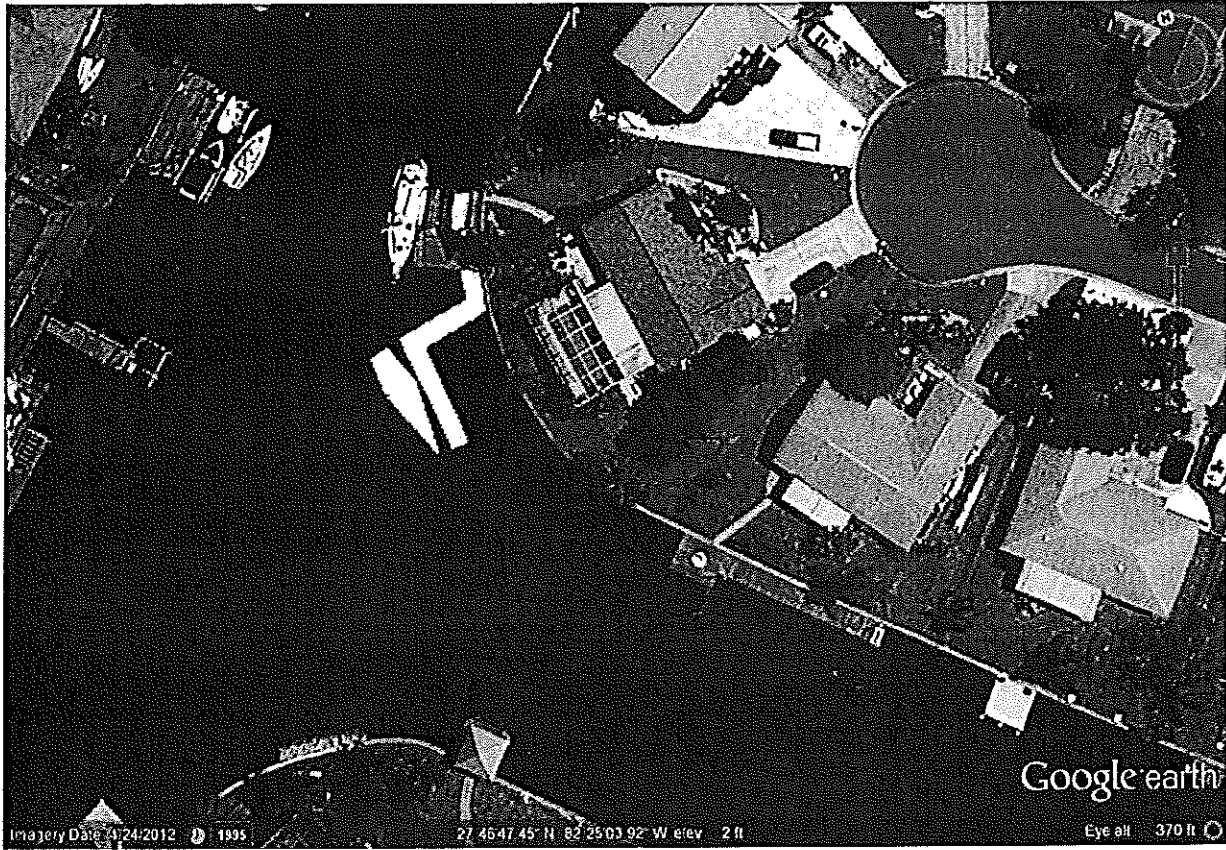


Exhibit #3

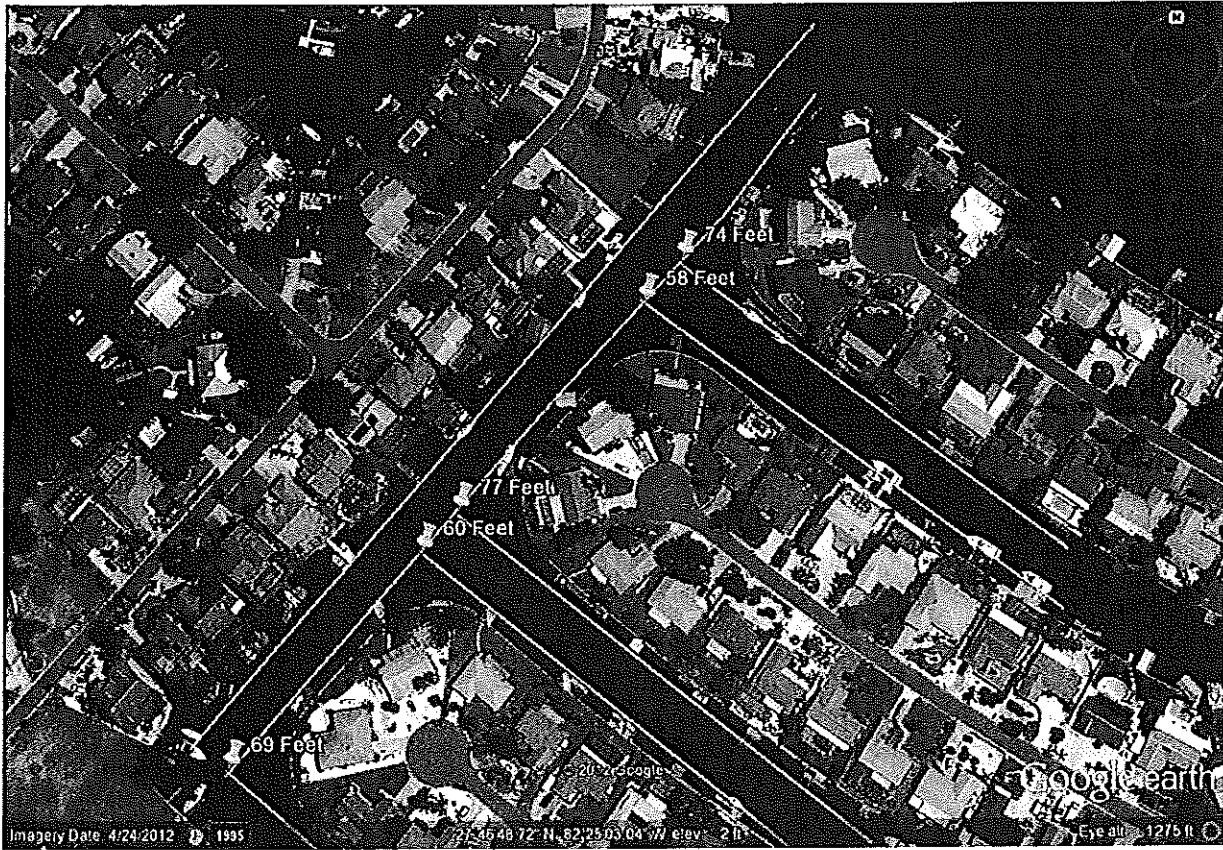


Exhibit #4



Exhibit #5

-----Original Message-----

From: Richard Booth [<mailto:rbooth@Tampaport.com>]
Sent: Friday, October 28, 2011 12:33 PM
To: Thompson, Mike
Cc: Holland, Kelly; Lockwood, Glenn; Sinko@epchc.org
Subject: MWP Question Medero property (1024 Sago Palm Way, Apollo Beach, FL)

Ref: (a) Your e-mail of October 25, 2011

Per ref (a), you requested an evaluation of how TPA would evaluate the proposed structure, particularly in respect to navigation safety. Please note attachments, from which this summary is based.

Findings of Fact.

1. The waterward extent of the proposed E-W axis dock structure, due to its orientation, ends at a location which is less than the existing adjacent dock lines along both the SW side of Sago Palm Way and the NW end of Sago Pam Way (abutting the main access canal paralleling Dolphin Cove Way).
2. The proposed dock would still allow an unimpeded open water circular area along the confluence of the along the Sago Palm- Spindle Palm canal centerline (c/l) totaling approximately 7850 square feet of navigation area, which is about +300% increase in open water navigation area than exists between the dock areas along the c/l within the confines of either Sago Palm- Spindle Palm canal or the main access canal abutting the Dolphin Cove Drive and NW end of Sago Palm Way.
3. The length of the proposed dock is similar to an existing dock at 6515 Dolphin Cove, located within the same canal confluence as the proposed dock.
4. TPA Submerged Lands management Rules (along with the FDEP rules upon which they are based), do not restrict riparian property owners to a single dock structure, except for at Limited Shoreline properties (with frontage less than 40 feet of shoreline) per Section V.A.3.f or possibly within a designated Aquatic Resource Protection Area per V.B.3.c. Because the applicant's property does not appear to meet either restriction, multiple independent docks can be permitted at 1024 Sago Palm Way.

Conclusions.


1. The proposed 48 x 4 dock and associated tie-pole meets TPA navigation standards with or without the dock walkway attachment along the seawall to the existing structure. Such an over-water attachment between the existing and

proposed structure is unnecessary because each can be accessed from the residential site uplands, which were established as part of a larger fill project for residential development within Apollo Beach.


Richard Booth
Environmental Supervisor
Tampa Port Authority Environmental Department
Phone: 813-905-5033


Exhibit #5 (continued)

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ROB TURNER, C.F.A.
HILLSBOROUGH COUNTY PROPERTY APPRAISER





[VIEW PROPERTY RECORD INFORMATION]

FOLIO:	0520440084
PIN NUMBER:	U-17-31-19-1SQ-000080-00041.0
OWNER 1:	MEDERO RICHARD MEDERO SUSAN KELLNER
ADDRESS:	1024 SAGO PALM WY APOLLO BEACH
LEGAL DESC:	LOT 41 BLOCK 60
DOR CODE:	0100

VALUE SUMMARY:	
BUILDING VALUE:	\$77,254
EXTRA FEATURE VALUE:	\$24,704
LAND VALUE (MARKET):	\$87,320
LAND VALUE (AGRI.):	\$0
JUST (MARKET) VALUE:	\$169,278
ASSESSED VALUE (A10):	\$127,371
EXEMPT VALUE:	\$50,000
TAXABLE VALUE:	\$77,371

SALES INFORMATION	
	NEW1
3/1/1983	\$76,000.00
1/1/1984	\$100.00
9/1/1993	\$110,000.00
6/15/2011	\$237,000.00

FOLIO: 0520440084 PIN: U-17-31-19-1SQ-000080-00041.0 ACREAGE: 0.29 / SQFT: 12,652

Map created on 10/25/2011 12:01:22 PM. 0 5.83 ft

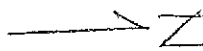
Copyright 2004. Hillsborough County Property Appraiser.

6515 Dolphin Cove

Exhibit #5 (continued)



Scale 1" = 100'



TPA School Aerial Photo

Exhibit #5 (Continued)

HECKER CONSTRUCTION COMPANY, INC.

P.O. BOX 989
 RUSKIN, FL 33575-0989

813 236-9305
 813 236-9306
RECEIVED

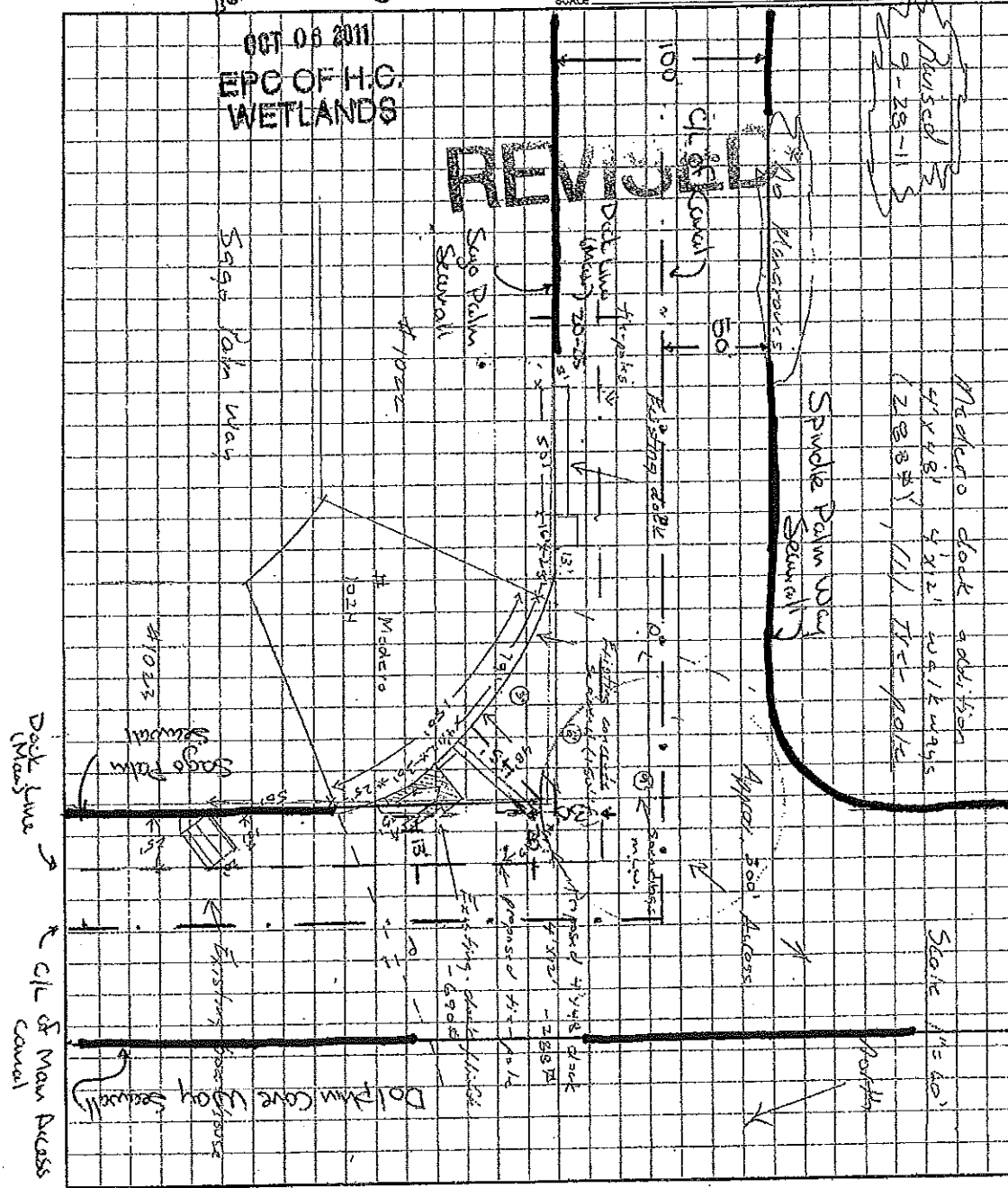
JOB _____

SHEET NO. _____ OF _____

CALCULATED BY _____ DATE _____

CHECKED BY _____ DATE _____

SCALE _____



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EPC Agenda Item Cover Sheet

Date of EPC Meeting: January 17, 2013

Subject: Approval of a Consent Decree between the United States, the Florida Department of Environmental Protection (FDEP), the Environmental Protection Commission (EPC) and Mosaic Fertilizer, LLC

Agenda Section: Regular Agenda

Division: EPC Legal and Administrative Services Division

Recommendation: Approve the proposed Consent Decree for natural resource damage restoration between the United States, the FDEP, the EPC and Mosaic Fertilizer, LLC and authorize the General Counsel of the EPC to execute and enforce the agreement on behalf of the Commission.

Brief Summary: In September 2004 during Hurricane Frances, approximately 65 million gallons of acidic process water was released into Tampa Bay from a phosphoric acid/fertilizer production facility in Riverview. At the time of the release, the facility was owned by Cargill Fertilizer, Inc. Mosaic Fertilizer, LLC succeeded to the liabilities of Cargill Fertilizer. The Parties have reached an agreement (Consent Decree) to restore the natural resource damages arising from the release. The proposed Consent Decree will be lodged contemporaneously with a Complaint in the U.S. District Court for the Middle District of Florida. EPC is named in the Complaint as an indispensable party and will be a signatory to the Consent Decree. The EPC General Counsel will summarize the restoration projects and key terms of the Consent Decree and seek Commission approval to execute the Consent Decree on behalf of the Commission and to enforce the terms of the agreement.

Financial Impact: No Financial Impact

Background: In September 2004 during Hurricane Frances, approximately 65 million gallons of acidic process water was released into Tampa Bay from a phosphoric acid/fertilizer production facility in Riverview. At the time of the release, the facility was owned by Cargill Fertilizer, Inc. Mosaic Fertilizer, LLC succeeded to the liabilities of Cargill Fertilizer, Inc. through a merger between Cargill and IMC Global, Inc. in 2004. Various state, federal, and local agencies have been working together with Mosaic to restore the natural resource damage. The National Oceanic and Atmospheric Administration (NOAA), United States Fish and Wildlife Service acting on behalf of the Department of the Interior (DOI), State of Florida Department of Environmental Protection (FDEP) and the Environmental Protection Commission of Hillsborough County (EPC), have reached an agreement with Mosaic to restore the natural resource damages arising from the release. The proposed agreement, referred to in the federal system as a Consent Decree, will be lodged contemporaneously with a Complaint in the U.S. District Court for the Middle District of Florida. Counsel for the various government agencies are each seeking approval from their respective agencies prior to lodging the Consent Decree.

A summary of the natural resource damage restoration requirements taken from the Consent Decree is as follows:

A. Removal of Exotic Invasive Vegetation (Emergency Primary Restoration). This Project involved the removal of exotic invasive plants from and adjacent to approximately 26 acres of mangrove and tidal marsh that allegedly were damaged by the Spill and were surrounded by exotic invasive vegetation. The exotic invasive

vegetation was primarily composed of Brazilian pepper, but included other species such as chinaberry (*Melia azedarach*), lead tree (*Leucaena leucocephala*), and air potato (*Dioscorea bulbifera*). Due to their tolerance of freezing events, rapid re-growth following injury, and lack of native insect predators, these species are aggressive invaders of disturbed habitats and have a competitive advantage over many native tidal marsh, mangrove forest, and transitional zone plants. The Trustees determined that invasion by the exotic invasive vegetation into the approximately 26-acre tract of injured wetland was likely to occur without emergency action that would have resulted in an extended period of recovery for the wetland and could have lead to the complete loss of the wetland habitat and resource services. This Project has been completed in accordance with applicable requirements of the Consent Decree.

B. Giant's Fish Camp Hydrology Restoration with Oyster Reef and Tidal Creek Creation and Enhancement. This Project is located at the southwest corner of the Highway 41 Bridge at the former site of the Giant's Fish Camp. The goals of this Project are to restore and enhance mangrove habitat and associated natural resource services by improving the hydrology in the general area, and to create an oyster reef habitat to provide additional ecosystem enhancement. This Project includes (1) connecting the Giant's Camp marina basin to an existing tidal creek via creation of a new, approximately 1,050 linear foot, waterway; (2) reopening approximately 2,094 linear feet of additional remnant tidal creeks through mangrove habitat largely closed to tidal flows; (3) widening existing waterways and removing approximately 6,700 cubic yards of spoil to eliminate blockages to sheet flow; (4) improving the hydroperiod in an impounded tidal pond of approximately 0.53 acres by enhancing tidal creek connection; and (5) creating an oyster reef habitat by placing substrate suitable for oyster larvae settlement ("cultch") along the seawall of the marina boat basin.

C. Borrow Pit Hydrological Restoration and Wetland Enhancement Project. The Borrow Pit Hydrological Restoration and Wetland Enhancement Project is located between Old Highway 41 and Highway 41 North within a Mosaic-owned parcel. The objective of this Project is to improve habitat functionality through creation of a tidal creek (approximately 900 linear feet) and pond (approximately one acre) that will be connected to the Delaney Creek Pop-Off Canal. The mouth of the ditch that currently connects the Borrow Pit Project site to the Delaney Creek Pop-Off Canal will be widened and extended into the new tidal creek. The creek will flow into a tidal pond that will remain partially wet during all but the lowest tides of the year. Removal of invasive vegetation will allow for colonization by native wetland vegetation at low and high marsh elevations. A saltern will also be created adjacent to the wetland to provide additional habitat diversity. Wetland enhancement will comprise approximately four acres.

D. Conservation Easements over the Giant's Camp and Borrow Pit Restorations. Conservation easements totaling approximately 103.76 acres will secure the approximately 82.48 acres of mangrove forest with restored and newly created tidal creeks in the Giant's Fish Camp Restoration Project and approximately 21.28 acres of newly created tidal creek, pond and saltern in the Borrow Pit Project.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: January 17, 2013

Subject: Enhanced Priority Permitting – Advanced Leadership Development Program (ALDP)

Agenda Section: Regular Agenda

Division: Air Management Division

Recommendation: Informational Report

Brief Summary: Priority Permitting is an Agency initiative that was created to help prioritize reviews and determinations. Ms. Lee is the coordinator and has taken this project on as part of the Agency's ALDP. Under this initiative, we have processed several projects and have had pre-application meetings with potential applicants to whom we have provided guidance on the environmental regulations and on the application process. The goal is to meet the applicant's project deadlines and in no instance take longer than half the statutory time to issue any necessary authorization. This presentation will show the successes of this program to date.

Financial Impact: No Financial Impact

Background: Priority Permitting is an Agency initiative that was created in the Fall of 2010 to help prioritize reviews and determinations, specifically for projects which are time sensitive and/or provide significant public benefit either environmentally or economically. Under this initiative, we have processed several projects and have had pre-application meetings with potential applicants to whom we have provided guidance on the environmental regulations and on the application process. These meetings have been very helpful to the applicants as we meet as one agency and are able to address any questions on any media in one single meeting. This helps expedite the issuance of permits and authorizations.

Not only have we improved in better coordinating our efforts within our Agency, but we have also improved our communication and coordination with other governmental agencies. In the past two years, we have had meetings with the FDEP, City of Tampa, City of Plant City and the City of Temple Terrace. These have been very positive and productive meetings and we will continue to expand our efforts by more fully incorporating additional permitting authorities, such as the State's DEP and SWFWMD along with the municipalities.

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: January 17, 2013

Subject: EPC's 2013 Action Plans

Agenda Section: Regular Agenda

Division: Executive Director's Report

Recommendation: Seeking Board approval for staff to move forward with the 2013 Action Plans as proposed.

Brief Summary: As part of the EPC's planning process, every year the staff develops action plans for initiatives which support the Agency's strategic priorities. After receiving input from the Board last month, and studying the various proposals at a planning retreat, staff is recommending twelve projects for calendar year 2013. If successfully implemented, these action plans should further the Agency's effectiveness and efficiency at protecting the natural resources of this County.

Financial Impact: No Financial Impact

Background: The EPC's strategic planning is based on the Sterling Management philosophy of continuous improvement. To achieve this, EPC staff has put together a strategic plan which is updated annually. Besides reviewing the priorities and guiding mission statements, staff also prepares a slate of new initiatives to improve the EPC's efficiency. Since the Agency started this formal procedure, they have completed some thirty-four of these initiatives referred to as action plans.

In 2013 they are proposing another twelve action plans. This represents a very ambitious schedule given the scope of some of the projects, but the Agency is committed to it. The purpose of this agenda item is review the final action plans and seek Board approval to proceed.

2013 Action Plans For EPC Staff

Strategic Priority 1 - Environmental Protection Excellence

Nutrient Management Initiative: Involves the monitoring of nutrient levels and tracking of biological responses and water quality targets for all segments of Tampa Bay and its major tributaries. It will include partnering with stakeholders both public and private to develop strategies to manage non-point sources of pollution in surface waters of Hillsborough County. Fiscal impact to EPC will be negligible outside of existing staff time.

Enhanced Environmental Resource Permitting (ERP) and Army Corps Permitting Delegation: The ERP permitting involves County Stormwater and EPC staff combining to obtain additional ERP delegation from the State in pursuit of one stop permitting. It would expand on preliminary agreements reached in 2011 & 2012. On the table will be various types of development reviews. In addition, staff is seeking full delegation for the Army Corps programmatic general permits via completion of a Coordination Agreement. Fiscal impact to EPC would be approximately \$5000 for contractual assistance and would be covered in the existing budget.

Green Initiatives Program: Involves a number of green initiatives affecting how the Agency operates as well as recognition for area businesses which institute sustainable practices. Staff will apply for Energy Star Certification for their offices at the RPS Center. They will also draft and implement a fiscally prudent green procurement policy for the Agency. To reach the community, this initiative will also incorporate a green business designation for qualified applicants. Fiscal impact to the EPC would be approximately \$10,000 for the Energy Star application process and outreach materials. This will be absorbed in the existing budget.

Compliance Assistance Improvement Project: Involves an agency committee looking at existing compliance assistance within the Agency and proposing a new compliance assistance tool for minor non-compliance situations. It would include revising the EPC's SOP on warning notices, and setting up a way to monitor the new procedures effectiveness. Fiscal impact to EPC would be negligible.

Strategic Priority 2 – Successful/Engaged Workforce

Sterling Challenge Application: To complete a Sterling Challenge Application for submittal to the Florida Sterling Council. This application will include an Agency Strategic Plan, Organizational Profile and an analysis of the seven Sterling Criteria for Performance Excellence. The application will result in a visit by a team of Sterling Examiners who will provide EPC staff a written report of strengths and opportunities for improvement. Fiscal impact to the Agency will be approximately \$15,000 plus significant staff time. Costs will be absorbed in the existing budget.

Strategic Priority 3 – Customer/Partner Focused Excellence

Neighborhood Outreach Initiative: To improve our interaction with citizens by meeting with HOAs to educate them on environmental issues in their community. Emphasize lake care and open burning prohibitions. Would work with Neighborhood Relations and provide signage similar to watch programs. Use social media to increase awareness of advisories and informational releases by the Agency. Fiscal impact to the EPC would be approximately \$15,000 to contract with County Communications to assist us and produce information. Costs will be absorbed in existing EPC budget.

Priority Permitting III/Accela: Would build on momentum of the first two years of the Priority Permitting program by more fully incorporating additional permitting authorities. State DEP and SWFWMD would be targeted for fuller cooperation along with the municipalities. It is to include Accela entries for both the County and the City of Tampa for certain wetland permitting. Fiscal impact to EPC should be negligible.

EPC Intern Program: To develop a formal college intern program for the Agency. Work with Stetson, UT, USF, HCC, etc. to obtain students interested in environmental careers and place them on pre-determined projects for credit and/or experience. Identify an in-house coordinator to run it. Fiscal impact to the EPC will be negligible.

Strategic Priority 4 – Fiscal Responsibility

Workforce Alliance Partnership: Would establish a partnership with the Workforce Alliance to identify candidates seeking a career in one of the environmental fields. Initiative would involve counseling, mentoring and meaningful work experience for eligible unemployed individuals referred to EPC. Fiscal impact to EPC would be negligible as Workforce Alliance would be paying any salaries for participants in the program.

Strategic Priority 5 – Continuous Improvement

On-Line Applications & E-Pay: Provide an e-payment system on our website and allow for electronic submittal of applications. Will involve working with the Clerk's Office and the County's Business and Support Services as well as an outside merchant. Fiscal impact to EPC to set it up will be minimal.

Common Agency Database Feasibility Study: Conduct a study among Agency staff to determine the feasibility of creating a common database used for management of all EPC's environmental data. Determine cost and make recommendation. Fiscal impact to EPC to make a recommendation would be negligible. Cost to implement any recommendation could be substantial and would have to be budgeted in future years.

Virtual Desktop System: Replace over 100 personal computers currently in use in the Agency with virtual clients (bricks), moving desktop computing power to a centralized server. Allow for better use of hardware/staff resources and improve system availability. Fiscal impact to EPC is \$65,000 and it is in the existing budget.

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