

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

MARCH 21, 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

A. Summary of recent CEAC meeting by CEAC Chair

B. Dr. Wayne Echelberger "In Memoriam"

III. CONSENT AGENDA

A. Approval of Minutes:

June 6, 20123

January 17, 20135

March 5, 20139

B. Monthly Activity Reports – January & February 201311

C. Pollution Recovery Fund Report (January & February 2013)23

D. Gardinier Settlement Trust Fund Report (January & February 2013)25

E. Legal Case Summaries (February & March 2013)27

F. EPC's 2013 Action Plans31

G. First Amendment to the Executive Director's Employment Agreement and
Concurrent Adoption of BOCC Policy on Reimbursement of Legal Expenses55

H. EPC Hearing Officer Replacement65

**IV. 33RD ANNUAL HILLSBOROUGH REGIONAL SCIENCE,
TECHNOLOGY, ENGINEERING and MATHEMATICS MERIT
AWARD 69**

V. LEGAL & ADMINISTRATIVE SERVICES DIVISION

Final Order Hearing regarding the Baldor vs EPC Boatlift Permitting Appeal
(EPC Case No. 12-EPC-015)71

**VI. RESTORE ACT: SOUTHWEST FLORIDA REGIONAL
ECOSYSTEM PLAN131**

**VII. ACTION PLAN UPDATE: VIRTUAL COMPUTER SYSTEMS
AT EPC133**

VIII.	<u>ADVANCED LEADERSHIP DEVELOPMENT PROGRAM (ALDP)</u> Enforcement Assistance with Financial Hardship Requests – Presentation by Reginald Sanford.....	135
IX.	<u>AUTHORIZATION TO ADMINISTER STANDARD PROGRAMMATIC GENERAL PERMITTING – PENDING AGREEMENT WITH US ARMY CORPS OF ENGINEERS</u>	137
X.	<u>EXECUTIVE DIRECTOR REPORT</u> A. EPC/FDEP Meetings B. Announcement of Public Meeting, “Lakes Horse, Raleigh & Rogers”	

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 in a culture of fairness and cooperation.

JUNE 6, 2012 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Special Meeting Regarding Expansion of the Pollutant Storage Tank Compliance Verification Program in Hillsborough and Manatee Counties, scheduled for Wednesday, June 6, 2012, at 2:30 p.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida

The following members were present: Chairman Kevin Beckner and Commissioners Victor Crist, Ken Hagan, Lesley Miller Jr., Sandra Murman, and Mark Sharpe.

The following member was absent: Commissioner Al Higginbotham.

☐ Chairman Beckner called the meeting to order at 2:34 p.m.

☐ Dr. Richard Garrity, EPC Executive Director, distributed information, summarized the item, and relayed staff recommendation. ☐ Mr. Charlie Hunsicker, director, Manatee County Natural Resources Department, remarked on the agreement. ☐ Chairman Beckner sought a motion to accept staff recommendation. **Commissioner Miller so moved, seconded by Commissioner Murman.** Following comments, ☐ **the motion carried six to zero.** (Commissioner Higginbotham was absent.)

☐ There being no further business, the meeting was adjourned at 2:41 p.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

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JANUARY 17, 2013 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, January 17, 2013, 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 9:07 a.m.), Ken Hagan, Al Higginbotham, Lesley Miller Jr., Sandra Murman, and Mark Sharpe (arrived at 9:10 a.m.).

▶ Chairman Beckner called the meeting to order at 9:05 a.m.

▶ INVOCATION AND PLEDGE OF ALLEGIANCE

CHANGES TO THE AGENDA

▶ Dr. Richard Garrity, EPC Executive Director, said there were no changes to the agenda but clarified Attorney Rick Muratti, EPC Legal Department, would replace Attorney Richard Tschentz, EPC General Counsel, for Item IV. A., final order hearing regarding the Metro versus EPC Dock Permitting Appeal.

I. PUBLIC COMMENT

▶ Mr. Erik Mikkelsen, 2206 North 27th Street, sought relief from a continuing noise issue. Discussion took place. Mr. Jerry Campbell, Director, EPC Air Management Division, gave further details on the matter.

▶ Chairman Beckner suggested EPC staff provide contact information and for Mr. Mikkelsen to return to the EPC Board if there was no resolution to the problem.

▶ Mr. Henry Atkins, 1023 Spindle Palm Way, spoke in objection to Item IV. A. and displayed photographs.

II. CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Summary of recent CEAC meeting by CEAC chairman.

▶ Ms. Pamela Jo Hatley, CEAC Chairman, summarized recent CEAC activities.

III. CONSENT AGENDA

A. Approval of Minutes: December 13, 2012.

THURSDAY, JANUARY 17, 2013 - DRAFT MINUTES

- B. Monthly Activity Reports - December 2012.
- C. Pollution Recovery Fund Report.
- D. Gardinier Settlement Trust Fund Report.
- E. Legal Case Summary, January 2013.
- F. 2012 Year-End Action Plan Updates

▶ Following technical difficulties, Chairman Beckner called for a motion to accept the Consent Agenda. **Commissioner Murman so moved, seconded by Commissioner Higginbotham, and carried six to zero.** (Commissioner Hagan was out of the room.)

IV. LEGAL AND ADMINISTRATIVE SERVICES DIVISION

- A. Final order hearing regarding the Medero versus EPC Dock Permitting Appeal, (EPC Case 12-005)

▶ Attorney Muratti explicated background material and gave procedural details. ▶ Chairman Beckner opened the hearing. ▶ Attorney Andrew Zodrow, EPC Legal Department, reviewed the case history, asked for a rule interpretation by the EPC Board, and distributed information.

▶ Mr. Richard Medero, 1024 Lago Palm Way, requested the hearing officer order be upheld and displayed photographs.

▶ Attorney Muratti expounded on the recommendations and conclusions of law. ▶ Mr. Medero and EPC staff responded to queries from Commissioner Higginbotham. ▶ **Commissioner Higginbotham moved to accept the recommendation as granted by the hearing officer, seconded by Commissioner Murman.** ▶ Subsequent to discussion about dock size/location and precedent, Commissioner Crist would not support the motion. Chairman Beckner had concerns about public safety and was not in favor of the motion. ▶ After a restatement by Chairman Beckner, **the motion failed three to four; Chairman Beckner and Commissioners Crist, Hagan, and Sharpe voted no.** Comments continued.

THURSDAY, JANUARY 17, 2013 - DRAFT MINUTES

- B. Approval of a consent decree between the United States, the Florida Department of Environmental Protection, the EPC, and Mosaic Fertilizer LLC

▶ Attorney Tschantz introduced the case and Mr. Tom Ash, EPC, who reviewed background material. ▶ **Commissioner Higginbotham moved approval, which was seconded by Commissioner Murman.** Subsequent to clarification of the recommendation by Chairman Beckner, **the motion carried seven to zero.**

V. ADVANCED LEADERSHIP DEVELOPMENT PROGRAM

Enhanced Priority Permitting

▶ Ms. Diana Lee, EPC, gave a presentation, as contained in background material.

VI. EXECUTIVE DIRECTOR REPORT

EPC 2013 Action Plans

▶ Dr. Garrity detailed background material, noted a new EPC mission statement, and sought approval to move forward with the 2013 action plans.

▶ **Commissioner Miller moved approval, seconded by Commissioner Murman, and carried seven to zero.** Dr. Garrity touched on the 2013 goals. ▶ Chairman Beckner advised changes to Dr. Garrity's contract would be brought back at the next EPC meeting.

▶ There being no further business, the meeting was adjourned at 10:33 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

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MARCH 5, 2013 - ENVIRONMENTAL PROTECTION COMMISSION SPECIAL MEETING - DRAFT
MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Special Meeting to Request Authority to take Appropriate Actions Against Brass Mug Incorporated, scheduled for Tuesday, March 5, 2013, at 9:30 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Kevin Beckner and Commissioners Ken Hagan, Al Higginbotham, Lesley Miller Jr., Sandra Murman, and Mark Sharpe.

The following member was absent: Commissioner Victor Crist.

▶ Chairman Beckner called the meeting to order at 9:30 a.m. and introduced ▶ Mr. Jerry Campbell, Director, EPC Air Management Division, who gave a presentation, as shown in background material, and staff recommendation.

Chairman Beckner sought public comment. ▶ Mr. Leon Adelstone, 14801 Briar Way, wanted the business shut down. ▶ Heather Mullis, owner, Brass Mug Incorporated, detailed compliance efforts and wanted time to make corrections.

▶ Ms. Ginger Adelstone, 14801 Briar Way, expounded on noise complaints.

After encouraging staff to work with the owner to resolve the situation, ▶ **Commissioner Hagan moved staff recommendation, seconded by Commissioner Murman.** ▶ Responding to Commissioner Higginbotham, Attorney Rick Muratti, EPC Legal Department, touched on appropriate legal actions. ▶ Commissioner Murman asked if legal precedent could be set. Subsequent to dialogue, ▶ Chairman Beckner clarified the motion was to accept staff recommendations to grant authority to take appropriate legal action including, but not limited to, filing a lawsuit, and also authorize the Executive Director to enter into any potential settlement, ▶ **which carried six to zero.** (Commissioner Crist was absent.)

TUESDAY, MARCH 5, 2013 - DRAFT MINUTES

▶ There being no further business, the meeting was adjourned at 9:55 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

jh

DRAFT

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

		<u>JAN</u>	<u>FEB</u>
A. Public Outreach/Education Assistance			
1	Phone calls	211	230
2	Literature Distributed	0	43
3	Presentations	1	5
4	Media Contacts	1	0
5	Internet	40	42
6	Host/Sponsor Workshops, Meetings, Special Events	0	0
B. Industrial Air Pollution Permitting			
1	Permit Applications received (Counted by Number of Fees Received)		
	a. Operating	2	5
	b. Construction	5	3
	c. Amendments / Transfers / Extensions	3	4
	d. Title V Operating:	2	0
	e. Permit Determinations	2	2
	f. General	6	2
2	Delegated Permits Issued by EPC and Non-delegated Permits 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	0	2
	b. Construction ¹	1	17
	c. Amendments / Transfers / Extensions ¹	2	2
	d. Title V Operating ²	0	11
	e. Permit Determinations ²	0	2
	f. General	0	8
3	Intent to Deny Permit Issued	0	0
C. Administrative Enforcement			
1	New cases received	0	0
2	On-going administrative cases		
	a. Pending	0	0
	b. Active	0	1
	c. Legal	2	2
	d. Tracking compliance (Administrative)	1	9
	e. Inactive/Referred cases	9	0
	TOTAL	12	12
3	NOIs issued	0	0
4	Citations issued	1	0
5	Consent Orders Signed	0	0
6	Contributions to the Pollution Recovery Fund	\$ -	\$ -
7	Cases Closed	0	0
D. Inspections			

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

		<u>JAN</u>	<u>FEB</u>
1	Industrial Facilities	13	18
2	Air Toxics Facilities		
	a. Area Sources (i.e. Drycleaners, Chrome Platers, etc.)	3	1
	b. Major Sources	5	7
3	Asbestos Demolition/Renovation Projects	14	24
E.	Open Burning Permits Issued	2	6
F.	Number of Division of Forestry Permits Monitored	202	128
G.	Total Citizen Complaints Received	43	44
H.	Total Citizen Complaints Closed	35	48
I.	Noise Complaints Received by EPC (Chapter 1-10)	24	17
J.	Noise Complaints Received by Sheriff's Office (County Ord. #12-12)	675	469
K.	Number of cases EPC is aware that both EPC & Sheriff responded	1	1
	a. Brass Mug		
L.	Noise Sources Monitored:	5	3
M.	Air Program's Input to Development Regional Impacts:	0	
N.	Test Reports Reviewed:	71	27
O.	Compliance:		
1	Warning Notices Issued	4	6
2	Warning Notices Resolved	3	4
3	Advisory Letters Issued	3	0
P.	AOR'S Reviewed	0	0
Q.	Permits Reviewed for NESHAP Applicability	6	2
R.	Planning Documents coordinated for Agency Review	1	4

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

JAN FEB

A. ENFORCEMENT

1.	New cases received	-	-
2.	On-going administrative cases	80	75
	Pending	1	1
	Active	29	26
	Legal	8	6
	Tracking Compliance (Administrative)	41	40
	Inactive/Referred Cases	1	2
3.	NOI's issued	2	-
4.	Citations issued	-	-
5.	Consent Orders and Settlement Letter Signed	1	-
6.	Civil Contributions to the Pollution Recover Fund (\$)	\$ 8,450	\$ -
7.	Enforcement Costs Collected (\$)	\$ 2,053	\$ -
8.	Cases Closed	2	2

B. SOLID AND HAZARDOUS WASTE

1.	FDEP Permits Received	0	0
2.	FDEP Permits Reviewed	0	0
3.	EPC Authorization for Facilities NOT Requiring DEP Permit	2	2
4.	Other Permits and Reports		
	County Permits Received	1	3
	County Permits Reviewed	6	0
	Reports Received (SW/HW + SQG)	30	19
	Reports Reviewed (SW/HW + SQG)	25	35
5.	Inspections (Total)		
	Complaints (SW/HW + SQG)	24	16
	Compliance/Reinspections (SW/HW + SQG)	12	20
	Facility Compliance	18	20
	Small Quantity Generator Verifications	218	142
	P2 Audits	0	0
6.	Enforcement (SW/HW + SQG)		
	Complaints Received	24	14
	Complaints Closed	16	19
	Warning Notices Issued	2	6
	Warning Notices Closed	0	1
	Compliance Letters	29	61
	Letters of Agreement	0	0
	Agency Referrals	4	2
7.	Pamphlets, Rules and Material Distributed	23	82

C. STORAGE TANK COMPLIANCE

1.	Inspections		
	Compliance	55	68
	Installation	6	4
	Closure	9	6
	Compliance Re-Inspections	6	7
2.	Installation Plans Received	4	4

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

	<u>JAN</u>	<u>FEB</u>
3. Installation Plans Reviewed	6	4
4. Closure Plans & Reports		
Closure Plans Received	6	5
Closure Plans Reviewed	6	6
Closure Reports Received	2	7
Closure Reports Reviewed	2	5
5. Enforcement		
Non-Compliance Letters Issued	38	44
Warning Notices Issued	3	-
Warning Notices Closed	-	2
Cases Referred to Enforcement	-	-
Complaints Received	-	-
Complaints Investigated	-	-
Complaints Referred	-	-
6. Discharge Reporting Forms Received	-	1
7. Incident Notification Forms Received	1	9
8. Cleanup Notification Letters Issued	-	1

D. STORAGE TANK CLEANUP

1. Inspections	29	24
2. Reports Received	85	77
3. Reports Reviewed	91	79
Site Assessment Received	12	8
Site Assessment Reviewed	11	13
Source Removal Received	2	3
Source Removal Reviewed	4	1
Remedial Action Plans (RAP'S) Received	6	3
Remedial Action Plans (RAP'S) Reviewed	9	2
Site Rehabilitation Completion Order/No Further Action Rec'd	6	2
Site Rehabilitation Completion Order/No Further Action Revw'd	6	2
Active Remediation/Monitoring Received	37	27
Active Remediation/Monitoring Reviewed	38	34
Others Received	22	34
Others Reviewed	23	27

E. RECORD REVIEWS

14	15
16	23

F. LEGAL PIR'S

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

JAN FEB

A. ENFORCEMENT

1.	New Enforcement Cases Received	-	1
2.	Enforcement Cases Closed	-	-
3.	Enforcement Cases Outstanding	38	39
4.	Enforcement Documents Issued	-	-
5.	Recovered Costs to the General Fund	\$ 935	\$ 170
6.	Contributions to the Pollution Recovery Fund	\$ 15,938	\$ 880

B. PERMITTING/PROJECT REVIEW - DOMESTIC

1.	Permit Applications Received	17	16
	a. Facility Permit	4	5
	(i) Types I and II	-	-
	(ii) Type III	4	5
	b. Collection Systems - General	9	4
	c. Collection systems-Dry Line/Wet Line	4	8
	d. Residuals Disposal	-	-
2.	Permit Applications Approved	13	20
	a. Facility Permit	1	3
	b. Collection Systems - General	3	8
	c. Collection systems-Dry Line/Wet Line	4	2
	d. Residuals Disposal	-	-
3.	Permit Applications Recommended for Disapproval	5	7
	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	48	58
	a. Facility Permit	9	11
	b. Collection Systems - General	17	17
	c. Collection systems-Dry Line/Wet Line	22	28
	d. Residuals Disposal	-	-
7.	Permit Determination	2	4
8.	Special Project Reviews		
	a. Reuse	-	-

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

	<u>JAN</u>	<u>FEB</u>
b. Residuals/AUPs	1	2
c. Others		

C. INSPECTIONS - DOMESTIC

1. Compliance Evaluation	14	14
a. Inspection (CEI)	7	5
b. Sampling Inspection (CSI)	7	9
c. Toxics Sampling Inspection (XSI)	-	-
d. Performance Audit Inspection (PAI)	-	-
2. Reconnaissance	37	38
a. Inspection (RI)	11	5
b. Sample Inspection (SRI)	-	-
c. Complaint Inspection (CRI)	23	31
d. Enforcement Inspection (ERI)	3	2
3. Engineering Inspections	13	15
a. Reconnaissance Inspection (RI)	1	-
b. Sample Reconnaissance Inspection (SRI)	-	-
c. Residual Site Inspection (RSI)	-	-
d. Preconstruction Inspection (PCI)	2	1
e. Post Construction Inspection (XCI)	9	14
f. On-site Engineering Evaluation	1	-
g. Enforcement Reconnaissance Inspection (ERI)	-	-

D. PERMITTING/PROJECT REVIEW - INDUSTRIAL

1. Permit Applications Received	3	1
a. Facility Permit	3	1
(i) Types I and II	1	-
(ii) Type III with Groundwater Monitoring	1	1
(iii) Type III w/o Groundwater Monitoring	1	-
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	-	-
2. Permits Recommended to DEP for Approval	-	-
3. Special Project Reviews	-	1
a. Facility Permit	-	1
b. General Permit	-	-
4. Permitting Determination	2	-
5. Special Project Reviews	42	41
a. Phosphate	13	9

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

	<u>JAN</u>	<u>FEB</u>
b. Industrial Wastewater	7	7
c. Others	21	25

E. INSPECTIONS - INDUSTRIAL

1. Compliance Evaluation (Total)	12	7
a. Inspection (CEI)	9	5
b. Sampling Inspection (CSI)	3	2
c. Toxics Sampling Inspection (XSI)	-	-
d. Performance Audit Inspection (PAI)	-	-
2. Reconnaissance (Total)	6	15
a. Inspection (RI)	-	5
b. Sample Inspection (SRI)	-	-
c. Complaint Inspection (CRI)	6	10
d. Enforcement Inspection (ERI)		
3. Engineering Inspections (Total)	9	7
a. Compliance Evaluation (CEI)	9	5
b. Sampling Inspection (CSI)	-	-
c. Performance Audit Inspection (PAI)	-	-
d. Complaint Inspection (CRI)	-	2
e. Enforcement Reconnaissance Inspections (ERI)	-	-

F. INVESTIGATION/COMPLIANCE

1. Citizen Complaints		
a. Domestic	21	23
(i) Received	11	17
(ii) Closed	10	6
b. Industrial	10	12
(i) Received	5	7
(ii) Closed	5	5
2. Warning Notices		
a. Domestic	2	6
(i) Issued	1	3
(ii) Closed	1	3
b. Industrial	-	1
(i) Issued	-	-
(ii) Closed	-	1
3. Non-Compliance Advisory Letters	8	4
4. Environmental Compliance Reviews		
a. Industrial	46	26
b. Domestic	116	99
5. Special Project Reviews	3	10

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

JAN FEB

G. RECORD REVIEWS

1.	Permitting Determination	2	3
2.	Enforcement	1	-

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

1.	Air division	76	58
2.	Waste Division	-	-
3.	Water Division	18	16
4.	Wetlands Division	-	-
5.	ERM Division	181	185
6.	Biomonitoring Reports	3	2
7.	Outside Agency	21	36

I. SPECIAL PROJECT REVIEWS

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

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

JAN FEB

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	46	59
Timeframes Met	96%	93%
Year to Date	99%	98%

Formal Wetland Delineation Surveys

Projects	5	13
Total Acres	78	859
Total Wetland Acres	10	169
# Isolated Wetlands < 1/2 Acre	1	10
Isolated Wetland Acreage	0.29	0.78

Construction Plans Approved

Projects	14	15
Total Wetland Acres	19	60
# Isolated Wetlands < 1/2 Acre	1	5
Isolated Wetland Acreage	0.37	0.93
Impacts Approved Acreage	0.11	0.74
Impacts Exempt Acreage	0.11	0.27

Mitigation Sites in Compliance

Ratio	13/14	11/14
Percentage	92%	79%

Compliance Actions

Acreage of Unauthorized Wetland Impacts	1.50	1.50
Acreage of Water Quality Impacts	0.00	0.00
Acreage Restored	0.90	0.80

TPA Minor Work Permit

Permit Issued	17	17
Permits Issued Fiscal Year 2013	64	81
Cumulative Permits Issue Since TPA Delegation (07/09)	660	677

REVIEW TIMES

# of Reviews	202	267
% On Time	97%	96%
% Late	3%	4%

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

JAN FEB

A. General

1.	Telephone conferences	910	695
2.	Unscheduled Citizen Assistance	459	428
3.	Scheduled Meetings	506	486
4.	Correspondence	2,272	1,644
1/ 5.	Intergency Coordination	115	162
1/ 6.	Trainings	6	7
1/ 7.	Public Outreach/Education	4	2
1/ 8.	Quality Control	122	114

B. Assessment Reviews

1.	Wetland Delineations	24	22
2.	Surveys	11	12
3.	Miscellaneous Activities in Wetland	26	21
4.	Mangrove	5	6
5.	Notice of Exemption	2	3
6.	Impact/Mitigation Proposal	8	15
7.	Tampa Port Authority Reviews	63	74
8.	Wastewater Treatment Plants (FDEP)	-	-
9.	Development Regn'l Impact (DRI) Annual Report	-	-
10.	On-Site Visits	111	108
11.	Phosphate Mining	2	-
12.	Comp Plan Amendment (CPA)	-	-
1/ 13.	AG SWM	-	1
	Sub-Total		

Planning and Growth Management Review

14.	Land Alteration/Landscaping	1	-
15.	Land Excavation	-	-
16.	Rezoning Reviews	11	12
17.	Site Development	14	15
18.	Subdivision	26	28
19.	Wetland Setback Encroachment	3	3
20.	Easement/Access-Vacating	-	-
21.	Pre-Applications	38	48
1/ 22.	Agriculture Exemption	-	-
	Sub-Total		
	Total Assessment Review Activities		

C. Investigation and Compliance

1.	Warning Notices Issued	8	14
2.	Warning Notices Closed	10	8
1/ 3.	Complaints Closed	33	31
4.	Complaint Inspections	43	41
5.	Return Compliance Inspections for Open Cases	33	27

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

		JAN	FEB
6.	Mitigation Monitoring Reports	10	6
7.	Mitigation Compliance Inspections	23	22
8.	Erosion Control Inspections	30	5
9.	MAIW Compliance Site Inspections	27	15
10.	TPA Compliance Site Inspections	17	9
2/ 11	Mangrove Compliance Site Inspections	4	4
1/ 12	Conservation Easement Inspection	4	5

D. Enforcement

1.	Active Cases	4	11
2.	Legal Cases	4	4
3.	Number of "Notice of Intent to Initiate Enforcement"	3	2
4.	Number of Citations Issued	-	-
5.	Number of Consent Orders Signed	2	-
6.	Administrative - Civil Cases Closed	1	3
7.	Cases Referred to Legal Department	4	4
8.	Contributions to Pollution Recovery	\$ 1,100	\$ 1,190
9.	Enforcement Costs Collected	\$ 607	\$ 257

E. Ombudsman

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

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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 13 POLLUTION RECOVERY FUND
10/1/2012 through 1/31/2013**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 542,334	Artificial Reef	\$ 146,828	Minimum Balance	\$ 120,000	
Interest	\$ 918	Project Monitoring	\$ 32,514	PROJ. FY 14 Budgets	\$ 179,342	
Deposits	\$ 58,680	FY 13 Projects	\$ 25,000	Asbestos Removal	\$ 5,000	
Refunds	\$ 8,522					
Total	\$ 610,454	Total	\$ 204,342	Total	\$ 304,342	\$ 101,770



PROJECT		Project Amount	Project Balance
FY 10 Projects			
#09-01 - Basis of Review for Borrow Pit Applications	EPE30442	\$ 68,160	\$ -
#09-02 - Effects of Restoration on Use of Habitat	EPE30443	84,081	16,725
		\$ 152,241	\$ 16,725
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
FY 13 Project			
USF Fertilizer Study Peer Review	EPE40207	\$ 25,000	\$ 25,000
		\$ 25,000	\$ 25,000
			\$ 156,714

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 13 POLLUTION RECOVERY FUND
10/1/2012 through 2/28/2013**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 542,334	Artificial Reef	\$ 146,828	Minimum Balance	\$ 120,000	
Interest	\$ 918	Project Monitoring	\$ 32,514	PROJ. FY 14 Budgets	\$ 179,342	
Deposits	\$ 60,100	FY 13 Projects	\$ 25,000	Asbestos Removal	\$ 5,000	
Refunds	\$ 8,816					
Total	\$ 612,168	Total	\$ 204,342	Total	\$ 304,342	\$ 103,484



PROJECT		Project Amount	Project Balance
FY 10 Projects			
#09-02 - Effects of Restoration on Use of Habitat	EPE30443	\$ 84,081	\$ 16,725
		\$ 84,081	\$ 16,725
FY 12 Projects			
Bahia Beach Mangrove Enhancement	EPE30449	\$ 56,700	\$ 56,700
Fertilizer Rule Implementation	EPE40206	\$ 50,000	\$ 33,735
USGS Partnership	EPE30450	\$ 25,000	\$ 18,750
		\$ 131,700	\$ 109,185
FY 13 Project			
USF Fertilizer Study Peer Review	EPE40207	\$ 25,000	\$ 25,000
		\$ 25,000	\$ 25,000
			\$ 150,910

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 13 GARDINIER SETTLEMENT TRUST FUND
10/1/2012 - 1/31/2013**

Fund Balance as of 10/1/12	\$ 61,274
Interest Accrued	78
Disbursements FY 13	-
Fund Balance	<u>\$ 61,352</u>
Encumbrances Against Fund Balance:	
SP634 Cockroach Bay ELAPP Restoration	\$ 61,352
Total Encumbrances	<u>\$ 61,352</u>
Fund Balance Available	<u><u>\$ -</u></u>

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 13 GARDINIER SETTLEMENT TRUST FUND
10/1/2012 - 2/28/2013**

Fund Balance as of 10/1/12	\$ 61,274
Interest Accrued	78
Disbursements FY 13	-
Fund Balance	<u>\$ 61,352</u>
Encumbrances Against Fund Balance:	
SP634 Cockroach Bay ELAPP Restoration	\$ 61,352
Total Encumbrances	<u>\$ 61,352</u>
Fund Balance Available	<u><u>\$ -</u></u>



EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 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
February & March 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. The appeal was transferred to a Hearing Officer on January 15, 2013, EPC filed a Motion for Summary Recommended Order and on February 20, 2013, the Hearing Officer ruled in favor of the EPC. The matter will be heard at the March 2013 regular EPC meeting for consideration of a Final Order. (AZ)

J.E. McLean, III and RaceTrac Petroleum, Inc. [12-EPC-014]: On October 24, 2012, the Appellants, RaceTrac Petroleum, Inc. and the property owner, filed a request for an extension of time to file an Appeal challenging the Executive Director's denial for wetland impacts on the corner of Lumsden and Kings Avenue. The extension was granted and the Appellants filed an appeal in this matter on December 7, 2012. A Hearing Officer has been assigned and conducted a case management conference. The parties are preparing for a hearing in this matter. (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. The EPC Executive Director has approved the permit and the case has been closed. (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 Appellants. The EPC staff filed exceptions to the Recommended Order and at the regular EPC meeting in January the Recommended Order was overturned and the permit application was denied. The case has been closed. (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 EPC has filed its Answer and affirmative defenses to the lawsuit. (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, subsequently, two additional requests for extensions were filed by the Petitioner and the current deadline to file a petition in this matter is May 14, 2013. (RM)

Ralph Jensen, Gregory Young and Shelly Sharp [13-EPC-001]: On February 22, 2013 The Appellants filed a request for an extension of time to file an Appeal challenging the Executive Director's issuance of Minor Work Permit #52264(R1). The extension was granted and the Appellants have until March 28, 2013 to file an appeal in this matter. (AZ)



EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: EPC's 2013 Action Plans

Agenda Section: Consent Agenda

Division: Executive Director's Report

Recommendation: None – Informational Only

Brief Summary: In January 2013, EPC staff brought the narrative descriptions of the proposed Agency's 2013 action plans to the Board for approval. After receiving input from the Board in December 2012, and studying the various proposals at a planning retreat, staff recommended those twelve individual initiatives which support the Agency's strategic priorities. Those narratives were approved by the Board, and are now presented as measurable action plans 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: As part of the Agency's Sterling Management planning process and philosophy of continuous improvement, staff held a strategic planning retreat in December 2012. This included input from the Board and a broad range of EPC staff. Besides reviewing the priorities and guiding mission statements, staff also prepared 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.

The narrative descriptions of the proposed action plans for 2013 were brought to the Board in January 2013 and approved. The twelve detailed action plans reflecting the Agency's strategic objectives for 2013 were then finalized and formally launched. Each Agency initiative is described in an individual action plan with measurable goals. The attachments reflect the finalized versions of the 2013 action plans. The owners of select action plans are scheduled to present an overview of their project to the Board at regularly scheduled EPC Board meetings throughout the year.

<p>Strategic Priority/Objective: 1.2 Environmental Protection Excellence / Protection of Surface Waters</p>	<p>Related Priorities/Objectives:</p>		
<p>Action Plan Name: Nutrient Management Initiative</p>	<p>Resources Needed: Existing EPC staff resources</p>		
<p>Action Plan Owner: Tom Ash</p>	<p>Estimated Outside Cost to the Agency : \$ 25,000 (USF Peer Review)</p>		
<p>To Be Completed by (Date): 12/31/14</p>	<p>Estimated Staff Hours Needed: Extensive</p>		
<p>Success to be measured by (numerical measures or specific actions): 1. Number of Bay Segments meeting bay-wide water quality goals (chlorophyll-a & water clarity) 2. Percentage of water quality stations for major tributaries in attainment (nutrients/Total Nitrogen)</p>	<p>Benefits to the Natural Resources/Agency: Improved surface water quality, improved environmental and public health, compliance with state and federal water quality mandates</p>		
<p>Specific Actions</p>	<p>By Who</p>	<p>When</p>	<p>How Accomplished</p>
<p>1. Monitor water quality targets and biological responses specific to nutrients in the four bay segments and freshwater portions of major tributaries and report quarterly w/comparison to last 5 year average for that quarter.</p>	<p>EPC/TBEP</p>	<p>In progress</p>	<p>Maintain historic environmental monitoring programs and partner on special studies as needed.</p>
<p>2. Continue partnering with TBEP & FDEP on nutrient management issues (TMDLs, BMAPs, Numeric Nutrient Criteria) and track number of meetings on a quarterly basis.</p>	<p>EPC</p>	<p>In progress</p>	<p>Participate in Nitrogen Management Consortium/lend technical and field support for data collection and monitoring.</p>
<p>3. Track progress of ongoing fertilizer study to measure effectiveness of current rule.</p>	<p>EPC</p>	<p>In progress</p>	<p>Partner with TBEP, adjacent counties, and contractor to evaluate effectiveness of local fertilizer rules. Provide written updates to the Board as part of the Consent Agenda as needed.</p>

Specific Actions	By Who	When	How Accomplished
4. Track progress of USF peer review of fertilizer study.	EPC / USF	Fall 2014	Enter into agreement w/USF College of Engineering for peer review.
5. Evaluate study results and present findings to EPC Board.	EPC / USF	Fall 2014	Partner w/USF on results & presentation.

<p>Strategic Priority/Objective: 1.4 Environmental Protection Excellence / Protection of Wetlands</p>	<p>Related Priorities/Objectives: 3.2 Improve Partnering Relationships</p>	
<p>Action Plan Name: Enhanced Delegation Responsibilities for Development Reviews</p>	<p>Resources Needed: Staff</p>	
<p>Action Plan Owner: Christina Bryant</p>	<p>Estimated Outside Cost to the Agency: \$ 5,000</p>	
<p>To Be Completed by (Date): Dec 2013</p>	<p>Estimated Staff Hours Needed: Extensive</p>	
<p>Success to be measured by:</p> <ul style="list-style-type: none"> •Submitting a complete application to DEP/SWFWMD seeking additional delegation regarding stormwater and wetland development reviews •Executing a Coordination Agreement w/ Army Corps to administer the State Programmatic General Permit on their behalf 	<p>Benefits to the Natural Resources/Agency:</p> <ul style="list-style-type: none"> •Improved customer service •Ability to permit in a more consistent manner 	
<p>Specific Actions</p>	<p>By Who</p>	<p>How Accomplished</p>
<p>1. Meet with County representative to review current status</p>	<p>C. Bryant, Scott Emery</p>	<p>Teleconference</p>
<p>2. Procure services of consultant (Clark Hull)</p>	<p>HC Stormwater</p>	<p>HC Stormwater section has agreed to hire Clark Hull to assist in the delegation process</p>
<p>3a. Determine what delegated duties can be obtained from FDEP/SWFWMD</p>	<p>C. Hull</p>	<p>Meetings/Discussions with pertinent FDEP/SWFWMD Staff</p>
<p>3b. Investigate the merits of obtaining a "Regional Permit" from the Army Corps</p>	<p>Appropriate EPC Staff</p>	<p>Meetings/Discussions with Pertinent Army Corps Staff</p>

Specific Actions	By Who	When	How Accomplished
4. Create structure of how delegated duties will be processed	Appropriate wetlands staff, HC Representatives	Jun – July 2013	Meetings with key participants
5a. Develop draft proposal and present to FDEP/SWFWMD 5b. Present revised Draft Coordination Agreement to the Army Corps	Appropriate EPC Staff, HC Staff, C. Hull Appropriate EPC Staff	August –Sept 2013	Power Point Draft Agreement
6. Update Board of progress	C. Bryant/ S. Emery	Oct 2013	Presentation at Board Meeting
7a. Finalize draft and apply to FDEP for agreed upon delegated duties 7b. Finalize draft Coordination Agreement with Army Corps	Appropriate Legal Staff	Nov-Dec 2013	Submit application to FDEP Sign Coordination Agreement w/ Army Corps

Strategic Priority/Objective: 1.5 Environmental Protection Excellence / Promote Environmental Stewardship		Related Priorities/Objectives: 3.2 Improve Partnering Relationships	
Action Plan Name: Energy Star Certification/Green Business Recognition/Green Procurement Policy		Resources Needed: Agency staff time, monies for Green Star application, promotion & procurement.	
Action Plan Owner: Hooshang Boostani		Estimated Outside Cost to the Agency : \$10,000	
To Be Completed by (Date): December 2013		Estimated Staff Hours Needed: Moderate	
Success to be measured by (numerical measures or specific actions): Energy Star Certification application submitted by June 2013. Have five Green Business Recognitions by December 2013. Have Green procurement policy draft complete by May 2013 and final policy complete by December 2013.		Benefits to the Natural Resources/Agency: Reduce energy usage and Agency carbon footprint. Minimize the use of resources by using recycled and reusable materials. Encourage industry to participate and advance better resource utilization.	
Specific Actions		How Accomplished	
1. Apply for EPA Energy Star attainment for the Roger Stewart Center.	By Who Margaret/ Steffanie and Green Team	When June 2013	Coordinate with County Energy Manager, Randy Klindworth, to collect energy use data and complete energy star application form
2.a. Develop a Green Business program. b. Award five (5) Green Business designations to the Green Hillsborough website.	By Who Margaret	When a. June 2013 b. December 2013	Set some general criteria and encourage businesses to apply. Post their green practices and accomplishments on website. Possible recognition at EPC Board meeting.
3. Prepare Green procurement policy draft to be complete by May 2013 and final policy complete by December 2013.	By Who Steffanie and Green Team Members	When May 2013 and December 3013	Work with legal to get a policy prepared and coordinate with EPC Administration and Senior Staff to ensure Agency wide implementation.

<p>Strategic Priority/Objective: 1.6 Environmental Protection Excellence / Improve Regulatory Compliance</p>	<p>Related Priorities/Objectives: 3.1 Improve Customer Satisfaction, 5.1 Improve Process Performance</p>	
<p>Action Plan Name: Compliance Assistance Improvement Initiative for Minor Non-Compliance and Small Businesses</p>	<p>Resources Needed: Staff Time</p>	
<p>Action Plan Owner: Jason Waters</p>	<p>Estimated Outside Cost to the Agency : \$ 5000</p>	
<p>To Be Completed by (Date): March 2014</p>	<p>Estimated Staff Hours Needed: Moderate</p>	
<p>Success to be measured by: Revise Agency Complaint & Warning Notice SOP to include Compliance Assistance Letter. Utilize the customer survey to receive business feedback. Track future compliance rate for participating businesses to determine effectiveness.</p>	<p>Benefits to the Natural Resources/Agency: Improve regulatory compliance by offering improved compliance assistance. Increased customer satisfaction by the regulated industry and citizens.</p>	
<p>Specific Actions</p>	<p>By Who</p>	<p>When</p>
<p>1. Form Committee of representatives from each division.</p>	<p>Senior Staff</p>	<p>January 31, 2013 Jason will meet with each director to determine appropriate staff member for committee</p>
<p>2. Draft Agency Complaint and Warning Notice SOP to Senior Staff</p>	<p>EPC Staff</p>	<p>May 31, 2013 Committee will present draft to Senior Staff</p>
<p>3. Revise Agency Complaint and Warning Notice SOP to include Compliance Assistance Letter</p>	<p>EPC Staff</p>	<p>August 31, 2013 Regular meetings of committee, Senior Staff review, Executive Director Approval</p>
<p>4. Implement tracking of Compliance Assistance Letters</p>	<p>EPC staff</p>	<p>Upon signature of Revised SOP, ongoing effort Will be tracked along with Agency Performance Measures by Division, review progress quarterly</p>

Specific Actions	By Who	When	How Accomplished
5. Set up customer survey at year's end for feedback from businesses.	EPC staff	December 31, 2013	Committee will develop survey, divisions will provide who to survey
6. Track Compliance rates for businesses receiving a Compliance Assistance Letter-3 months after closeout of C.A.L.	EPC staff	Upon signature of Revised SOP, ongoing effort	Will be tracked along with Agency Performance Measures by Division, review progress quarterly

<p>Strategic Priority/Objective: 2.3 Successful and Engaged Workforce / Employee Empowerment</p>	<p>Related Priorities/Objectives: 1.0 Environmental Protection Excellence, 3.0 Customer/Partner Excellence, 4.0 Fiscal Responsibility, 5.0 Continuous Improvement</p>
<p>Action Plan Name: Prepare Sterling Challenge Application</p>	<p>Resources Needed: Staff time, Consultant services, Board support</p>
<p>Action Plan Owner: Rick Garrity</p>	<p>Estimated Outside Cost to the Agency : \$15,000</p>
<p>To Be Completed by (Date): December 31, 2013</p>	<p>Estimated Staff Hours Needed: Extensive</p>
<p>Success to be measured by (numerical measures or specific actions): Timely completion of a Sterling Challenge Application with Strategic Plan, Organizational Profile, and Sterling Category Analyses</p>	<p>Benefits to the Natural Resources/Agency: Excellence in performance of agency mission and employee participation in that mission. Although a good amount of staff time will be required and approximately \$15,000 needed for consultant services and Sterling submittal costs, the benefits in leadership, Strategic Planning, Customer Focus, Measurement, Workforce & Operations will be well worth the effort.</p>
<p>Specific Actions</p>	<p>By Who</p>
<p>1. Continue Sterling Coordinator group to facilitate the application</p>	<p>SCG & Senior Staff</p>
<p>2. Complete drafting of Category 4</p>	<p>Category Committee with Leslie & Laura (L&L)</p>
<p>3. Complete committee work and drafting of Category 5</p>	<p>Category Committee with L&L</p>
<p>When</p>	<p>How Accomplished</p>
<p>Through 2013</p>	<p>Bi-monthly meetings</p>
<p>January 31, 2013</p>	<p>Committee and drafting team</p>
<p>February 28, 2013</p>	<p>Committee and drafting team</p>

Specific Actions	By Who	When	How Accomplished
4. Complete committee work and drafting of Category 6	Category Committee with L&L	April 30, 2013	Committee and drafting team
5. Complete committee work and drafting of Category 7	Category Committee with L&L	July 31, 2013	Committee and drafting team
6. Review and update Strategic Plan, Organizational Profile, and Sterling Category Analyses	SCG, Senior staff, L&L	September 30, 2013	Meetings and assignments as needed to complete this work
7. Finalize complete Sterling package for submission	SCG, Senior staff, L&L	October 31, 2013	Meetings and assignments as needed to complete this work

<p>Strategic Priority/Objective: 3.1 Customer Excellence / Customer Satisfaction</p>	<p>Related Priorities/Objectives: 1.5 Promote Environmental Stewardship</p>	
<p>Action Plan Name: Neighborhood Outreach Initiative</p>	<p>Resources Needed: Agency PIE Committee, County Communications, Agency staff time, and monies for signage and outreach literature</p>	
<p>Action Plan Owner: Jeff Sims</p>	<p>Estimated Outside Cost to the Agency : \$10,000 for materials/contracting costs, and up to \$20,000 from PRF for mini-grant program</p>	
<p>To Be Completed by (Date): December 2013</p>	<p>Estimated Staff Hours Needed: Extensive</p>	
<p>Success to be measured by: Develop EPC Community Partner Program. Have 3 neighborhoods sign on as official members in 2013. Develop EPC Advisory/Notification System and get 75 individuals to sign on in 2013. See citizen customer satisfaction score from biennial survey go from 3.06 in 2012 to 3.30 in 2014 survey. Produce updated Open Burn outreach material.</p>	<p>Benefits to the Natural Resources/Agency: Raise public awareness of environmental issues in citizen's neighborhoods (close to home). Assist them in improving their quality of life and knowledge of where to go if an environmental issue arises. Benefit to EPC is that we add to our eyes and ears in the community.</p>	
<p>Specific Actions</p>	<p>By Who</p>	<p>When</p>
<p>1. Develop EPC Community Partner Program including web-based connection to EPC Home Page for community access to details.</p>	<p>Jeff/ Elaine (MIS Staff)</p>	<p>March 2013</p>
<p>2. Attend 10th Annual Neighborhood Conference to promote Community Partner Program.</p>	<p>EPC Staff</p>	<p>March 2013</p>
<p>3. Develop EPC Advisory/Notification System on website to record contact info of citizens desiring electronic notifications of significant local environmental announcements.</p>	<p>Jeff/ Elaine (MIS Staff)</p>	<p>April 2013</p>
<p>How Accomplished</p>		<p>Develop written details of program in conjunction with Neighborhood Relations and include connection via icon on webpage. Contact Neighborhood Relations to reserve presentation space, and highlight HOA Partner Program as part of speaking topic. Install icon on web page with software to record contact data and maintain active roster of citizens. Enact system to notify members electronically of announcements.</p>

Specific Actions	By Who	When	How Accomplished
4. Promote Community Partner Program and Advisory/Notification System at outreach events attended by EPC (i.e. Earth Day, Clean Air Fair, etc.)	EPC Staff	May 2013	Provide literature at events detailing programs, including sign-up cards for Notification System along with reference as part of raffle entries at Clean Air Fair.
5. Develop and produce updated Open Burn outreach material.	Jeff/ FIMO Staff	July 2013	Consult with FIMO staff regarding content. Utilize County Communications as needed.
6. Perform presentation highlighting Community Partner Program to at least one Homeowner's Association.	Jeff/ EPC Staff	July 2013	Prepare presentation and provide details of programs, including mini-grant program, along with outreach materials as available.
7. Acquire at least 3 HOAs as members of Community Partner Program and at least 75 members to join Notification System.	Jeff/ EPC Staff	December 2013	Perform presentations, promote programs, and publicize new initiatives to attract interested parties.

Strategic Priority/Objective:		Related Priorities/Objectives:	
3.2 Improve Partnering Relationships		Resources Needed: Agency staff time, potentially some monies for equipment and management of the program.	
Action Plan Name: EPC Intern Program		Estimated Outside Cost to the Agency : \$1,000	
Action Plan Owner: Andy Schipfer		Estimated Staff Hours Needed: Moderate	
To Be Completed by (Date): December 2013		Benefits to the Natural Resources/Agency: Provides training immediately beneficial to the intern and the institute of higher education the student is enrolled while producing work products beneficial to EPC at minimal or no cost to the public.	
Success to be measured by: Revise Agency policy on Volunteer Training, establishment of operating procedures to formalize process, identification and relationship establishment with University partners, and implementation of the program. Have at least two interns at EPC this fall.			
Specific Actions	By Who	When	How Accomplished
1. Establish committee with appropriate representatives from each Division.	Andy Schipfer	March 2013	Coordinate with Directors and Rick Muratti to identify best members.
2. Update Volunteer Training policy to reflect current approaches for interns for the Agency while focusing on potential changes that can more formalize procedures for all areas.	Committee	June 2013	Have draft policy reviewed and approved by Senior Staff by June 2013.
3. Identify and establish communication with contacts at Universities to more formalize intern program. Establish agreements where partners deem appropriate.	Committee	August 2013	Committee will list current contacts (such as the ones at Stetson, UF, UT, USF, Eckerd and HCC) and identify new contacts as well as reach out to the contacts.
4. Initiate recruitment of the first class of interns under the new policy. Transfer oversight and processing to Administration.	Committee	September 2013	Seek qualified applicants from participating universities and match them up with requests from individual divisions.

<p>Strategic Priority/Objective: 3.3 Customer Excellence / Stakeholder Relationships</p>	<p>Related Priorities/Objectives:</p>		
<p>Action Plan Name: Permitting Enhancements</p>	<p>Resources Needed: Existing EPC staff resources</p>		
<p>Action Plan Owner: Diana Lee</p>	<p>Estimated Outside Cost to the Agency: \$</p>		
<p>To be Completed by (Date): December 2013</p>	<p>Estimated Staff Hours Needed: Extensive</p>		
<p>Success to be measured by: Number of small businesses which utilize Priority Permitting (goal of 10 in 2013); expand Priority Permitting to DEP and SWWMD; demonstrated ability to enter wetlands permit data into County & City Accela systems. Surveyed applicants using Priority Permitting giving staff an overall satisfaction rating of 3.6 or better 100% of the time. 95% of applications processed in less than half the statutory time.</p>	<p>Benefits to the Natural Resources/Agency: Continue the efforts of providing expedited reviews for applicants with time sensitive projects. Expand our efforts by more fully incorporating additional permitting authorities, such as the State's DEP and SWFWMD along with the municipalities. Promote more transparency by having public access to permitting data with the use of Accela Automation.</p>		
<p>Specific Actions</p>	<p>By Who</p>	<p>When</p>	<p>How Accomplished</p>
<p>1. Meet with Economic Development and make them aware of the program.</p>	<p>Priority Permitting Chair,</p>	<p>February 2013</p>	<p>Contact ED and meet with them to discuss how best to implement this program with their clients.</p>
<p>2. Contact County and City Accela project officers and determine what assistance we can provide.</p>	<p>Priority Permitting Chair, MIS and Wetlands</p>	<p>March 2013</p>	<p>Host a single meeting with both parties present.</p>

Specific Actions	By Who	When	How Accomplished
3. Meet with DEP and SWMD to discuss expanding the program coordination with their permitting centers.	Priority Permitting Committee	April 2013	Contact each agency and meet with them one-on-one.
4. Meet with Plant City and Temple Terrace to discuss continuing efforts in expanding the program coordination with their permitting centers.	Priority Permitting Committee	May 2013	Contact each of the municipalities and /or meet with them one-on-one.
5. Meet with City of Tampa to follow up on Mayor's initiative.	Priority Permitting Committee	July 2013	Contact Thom Snelling's office..
6. Assist small businesses in Tampa needing environmental permits.	Priority Permitting Committee	October 2013	Meet with ombudsman.
7. Keep EPC Board advised of progress on implementing Accela for wetlands permitting	PP Chair	November 2013	Present to the Board.

<p>Strategic Priority/Objective: 4.2 Control Expenditures</p>	<p>Related Priorities/Objectives: 2.1 Employee Training and Development, 3.2 Improve Partnering Relationships</p>		
<p>Action Plan Name: Workforce Alliance Partnership</p>	<p>Resources Needed: Staff Time, Approval from Workforce Alliance</p>		
<p>Action Plan Owner: Joyce H. Moore</p>	<p>Estimated Outside Cost to the Agency: None</p>		
<p>To Be Completed by (Date): December 2013</p>	<p>Estimated Staff Hours Needed: Minimal to Moderate Training Hours</p>		
<p>Success to be measured by (numerical measures or specific actions): Hiring and training 3 Workforce Alliance trainees by December 2013.</p>	<p>Benefits to the Natural Resources/Agency: To offer counseling/mentoring for unemployed or individuals interested in environmental or government careers, with no additional expenditures needed from EPC. In fact, EPC might actually save money on hiring temporary employees.</p>		
<p>Specific Actions</p>	<p>By Who</p>	<p>When</p>	<p>How Accomplished</p>
<p>1. Set up meeting to discuss EPC becoming a training vendor for Tampa Bay Workforce Alliance.</p>	<p>Dr. Garrity</p>	<p>March 31, 2013</p>	<p>Contact Mr. Ed Peachy, Workforce Alliance.</p>
<p>2. Receive information on becoming an approved training vendor for Tampa Bay Workforce Alliance.</p>	<p>Joyce Moore, Dr. Garrity</p>	<p>March 31, 2013</p>	<p>Meeting with Workforce Alliance representative.</p>
<p>3. Contact division directors to determine division interests for candidates.</p>	<p>Joyce Moore</p>	<p>March 31, 2013</p>	<p>Meetings with Division Directors.</p>

Specific Actions	By Who	When	How Accomplished
4. Execute contract with Workforce Alliance.	Joyce Moore, Dr. Garrity, Richard Tschantz	March 31, 2013	Meeting with Workforce Alliance representatives.
5. Hire and put in place Workforce Alliance Trainee(s) for Quarter 2 of 2013.	Joyce Moore	April 1, 2013	By supervising and completing the Work Experience Job-Training Attendance Sheet.
6. Hire and put in place a Workforce Alliance Trainee(s) for Quarter 3 of 2013.	Joyce Moore	July 1, 2013	By supervising and completing the Work Experience Job-Training Attendance Sheet.
7. Hire and put in place a Workforce Alliance Trainee(s) for Quarter 4 of 2013.	Joyce Moore	October 1, 2013	By supervising and completing the Work Experience Job-Training Attendance Sheet.

<p>Strategic Priority/Objective: 5.2 Continuous Improvement / Improve the Usage of Technology</p>	<p>Related Priorities/Objectives: 3.1 Improve Customer Satisfaction</p>
<p>Action Plan Name: Online Applications & E-Pay</p>	<p>Resources Needed: EPC, HC Clerk's office, HC Business Services, outside merchant account</p>
<p>Action Plan Owner: Elaine DeLeeuw & Jackie Julien</p>	<p>Estimated Outside Cost to the Agency: \$ 10,000 for first year (lost revenue based on Board policy not to charge convenience fees)</p>
<p>To Be Completed by (Date): December 2013</p>	<p>Estimated Staff Hours Needed: Extensive</p>
<p>Success to be measured by: The system will be successful if the public is able to submit and pay for an application from the EPC website. Goal is to have 10% of the applications submitted in the fourth quarter of 2013 done so on-line.</p>	<p>Benefits to the Natural Resources/Agency: Providing an applicant with capability to submit an application and pay fees on-line. Expedites the reviews and saves staff time.</p>
<p>Specific Actions</p>	<p>When</p>
<p>1. Meet with Clerk's office and County Fiscal department to evaluate plan of action.</p>	<p>How Accomplished Setup meeting at County Center with Catherine Edwards and Julie Wisdom</p>
<p>2. Determine payment processor.</p>	<p>February 2013 February 2013</p>
<p>3. Determine payment gateway.</p>	<p>Review approved processors and make selection based on input from Clerk and Fiscal Need County approved gateway to facilitate the transfer of information between processor and bank</p>
<p>4. Testing and launching of e-payments on website.</p>	<p>March 2013 April 2013</p>
	<p>Testing of processor and gateway from website to ensure system is working</p>

Specific Actions	By Who	When	How Accomplished
5. Take draft of model applications to Senior Staff for approval.	Jackie	April 2013	Work with each division to get staff approval on a consistent format
6. Obtain Legal approval for model application format.	Jackie	May 2013	Take model to Legal for their review and approval
7. Add approved model applications to EPC website and install electronic submittal capability.	Elaine & Jackie	July 2013	Will work with Jackie and add back Delineation form (removed in Dec) along with other standardized forms
8. Launch of complete e-payment system and on-line applications with standardized forms.	Elaine & Jackie	October 2013	Provide demonstration to Senior Staff and e-mail to EPC-All along with press release

<p>Strategic Priority/Objective: 5.2 Continuous Improvement / Improve the Usage of Technology</p>	<p>Related Priorities/Objectives: 2.2 Improve Employee Satisfaction, 4.2 Control Expenditures</p>	
<p>Action Plan Name: Common Agency Database Feasibility Study</p>	<p>Resources Needed: Agency staff time, potential cost for an outside consultant's time for proposal development</p>	
<p>Action Plan Owner: Jim Birney</p>	<p>Estimated Outside Cost to the Agency : \$ 5000</p>	
<p>To Be Completed by (Date): December 2013</p>	<p>Estimated Staff Hours Needed: Extensive</p>	
<p>Success to be measured by: Documenting all the Agency's databases and developing a proposal with requirements, costs and timelines to implement a common agency database</p>	<p>Benefits to the Natural Resources/Agency: Create more robust data system by having databases share info; streamlined IT management of EPC's databases, eliminate some duplicate entries, and enhance reporting capabilities.</p>	
<p>Specific Actions</p>	<p>By Who</p>	<p>When</p>
<p>1. Document each Agency database.</p>	<p>Jim Birney</p>	<p>April 2013</p>
<p>2. Make recommendation which existing databases should be connected creating a common database.</p>	<p>Jim Birney/ Database Users Group</p>	<p>June 2013</p>
<p>3. Get some information on feasibility and cost of creating this common database.</p>	<p>Jim Birney/ Procurement</p>	<p>July 2013</p>
<p>How Accomplished</p>		<p>Create a written document detailing all 33 databases and presenting to Senior Staff.</p> <p>Host meetings with Database User Group and make written recommendation to senior Staff.</p> <p>Develop a Request For Information (RFI) with Procurement and issue you it by month's end.</p>

Specific Actions	By Who	When	How Accomplished
4. Evaluate RFI responses and make recommendation to Senior Staff to proceed with a Request for Proposal (RFP).	Jim Birney/ Database User Group	September 2013	Meet with Database User Group and make written recommendation.
5. If appropriate, solicit vendor quotes for development of common Agency database.	Jim Birney/ Procurement	October 2013	Work with Procurement and develop a RFP. Take best bid and plug it into the 2015 budget.

<p>Strategic Priority/Objective: 5.2 Continuous Improvement / Improve the Usage of Technology</p>	<p>Related Priorities/Objectives: 2.2 Employee Satisfaction, 4.2 Control Expenditures</p>		
<p>Action Plan Name: Virtual Desktop System</p>	<p>Resources Needed: Internal MIS staff</p>		
<p>Action Plan Owner: Shannon Parris</p>	<p>Estimated Outside Cost to the Agency : \$ 65,000</p>		
<p>To Be Completed by (Date): 12/31/2013</p>	<p>Estimated Staff Hours Needed: 360</p>		
<p>Success to be measured by (numerical measures or specific actions): Percentage of Virtual Desktops installed (goal of 100% of the 80 units by year's end) and the measured system availability (goal of greater than 96%)</p>	<p>Benefits to the Natural Resources/Agency: Increased system availability. More efficient use of hardware and staff resources.</p>		
<p>Specific Actions</p>	<p>By Who</p>	<p>When</p>	<p>How Accomplished</p>
<p>1. Configure Network, Servers, and SAN hardware</p>	<p>MIS</p>	<p>April, 2013</p>	<p>Using internal MIS staff and VMware support contract</p>
<p>2. Determine best practice for software configuration</p>	<p>MIS</p>	<p>April, 2013</p>	<p>Analysis of white paper provided by Dell and VMware</p>
<p>3. Configure the virtual server software environment</p>	<p>MIS</p>	<p>June, 2013</p>	<p>Using internal MIS staff</p>
<p>4. Configure the virtual desktop software environment</p>	<p>MIS</p>	<p>June, 2013</p>	<p>Using internal MIS staff</p>
<p>5. Determine virtual client deployment schedule</p>	<p>Shannon</p>	<p>June, 2013</p>	<p>Create matrix outlining oldest machines and user job requirements</p>

Specific Actions	By Who	When	How Accomplished
6. Begin installation of VDI Client (bricks)	MIS	July, 2013	Begin to replace units.
7. Measure system availability	MIS	November, 2013	Use System Center Essentials program to measure performance

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: First Amendment to the Executive Director's Employment Agreement and Concurrent Adoption of BOCC Policy on Reimbursement of Legal Expenses

Agenda Section: Consent Agenda

Division: Legal and Administrative Services Division

Recommendation: Approve the First Amendment to the Executive Director's Employment Agreement and Adopt the BOCC Policy Regarding Reimbursement of Legal Expenses as an EPC Policy

Brief Summary: On December 13, 2012, the Commission approved a new Employment Agreement between the Commission and Dr. Richard Garrity for his services as Executive Director through July 1, 2015. At the Commission meeting, the Commission instructed the Executive Director to bring back an amendment regarding legal expenses once the BOCC finalized the policy regarding reimbursement of legal expenses. This amendment utilizes the same language in County Administrator Mike Merrill's recent employment agreement amendment, to reflect that the Executive Director is subject to the BOCC's policy on Reimbursement of Legal Expenses. Additionally, the Commission is adopting the BOCC policy as an EPC policy.

Financial Impact: None.

Background: On June 30, 2000, Dr. Richard Garrity and the EPC Commissioners executed an Employment Agreement which appointed Dr. Garrity as Executive Director of the EPC. His original agreement was modified three times to extend the expiration date through July 1, 2013. On October 18, 2012, the Commission instructed staff to prepare an amended Employment Agreement for discussion in December 2012 using standardized language being created for the County Attorney and County Administrator. On December 13, 2012, the Commission approved a new Employment Agreement between the Commission and Dr. Richard Garrity for his services as Executive Director through July 1, 2015.

At the December 2012 Commission meeting, the Commission also instructed the Executive Director to bring back an amendment to his new agreement to include soon to be developed BOCC language regarding reimbursement of legal expenses. The BOCC finalized the policy regarding reimbursement of legal expenses in January. This amendment utilizes the same language in Mr. Merrill's amendment approved by the BOCC January 9, 2013, to reflect that the Executive Director is subject to the BOCC's policy regarding legal expenses (Policy No. 03.04.01.05). Additionally, the Commission is adopting the BOCC policy as an EPC policy.

Dr. Garrity requests the First Amendment to the Employment Agreement be approved. Additionally, the Commission is adopting the BOCC Policy entitled "Reimbursement of Legal Expenses" as an EPC policy so that it applies to the Executive Director and EPC staff. The policy will be read to apply to EPC staff, and where necessary and as long as it does not frustrate the intent of the policy, County terminology is to be substituted for EPC terminology (e.g. – references to "County Administrator" will be read as "Executive Director").

Attachments: 1) BOCC Policy - Reimbursement of Legal Expenses (Policy No. 03.04.01.05)
2) First Amendment to Employment Agreement

BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY
TAMPA, FLORIDA 33511

BOARD POLICY - SECTION 03.04.01.05

SUBJECT: REIMBURSEMENT OF LEGAL EXPENSES

EFFECTIVE DATE: January 9, 2013

SUPERCEDES: April 2006, April 1997

SECTION 1.

INTENT: As used in the balance of this policy, the words "successfully defend or prevail" shall apply to individual counts, charges and/or allegations, Commission on Ethics complaints, or Florida Bar complaints and shall mean the dismissal, the finding of not guilty, a result of no charges being filed, or a verdict in favor of the person covered herein as set forth in Section 3, below. A failure to successfully defend or prevail against one or more counts, charges or allegations shall not necessarily affect the application of the policy to other counts, charges and/or allegations which were successfully defended or against which the officer or employee prevailed.

SECTION 2.

DEFINITIONS: "Reasonable attorney's fees" shall mean fees earned by an attorney and/or attorneys licensed to practice law in the State of Florida, based on the customary per hour rate charged in Hillsborough County, Florida, for similar work performed by attorneys within the County. The County Attorney shall survey the legal community in Hillsborough County to determine the customary rate charged by attorneys for similar work. Then, every other year thereafter the County Attorney shall repeat the survey to determine whether the customary rate should be adjusted. Any recommended adjustments to the

customary rate will be presented to the Board for their consideration.

SECTION 3.

Subject to Section 7, the Board of County Commissioners of Hillsborough County shall, pursuant to the procedures set forth herein, reimburse present and former county commissioners and county public officers, and their present and former employees and agents, including appointees of the Board or such officers, for the reasonable attorney's fees and costs that such persons have incurred when they successfully defend or prevail in civil, criminal, and/or ethical investigations and/or actions that arise out of and in connection with their scope of county employment or county function, while acting in their official capacity, and while serving a public purpose. The Board of County Commissioners shall, pursuant to the provisions of this policy, determine if the attorney's fees and costs shall be reimbursed, and if so, in what amount.

SECTION 4.

Any person against whom counts, charges and/or allegations have been leveled stemming from actions within the scope of their employment shall contact the County Attorney prior to retaining private counsel. The County Attorney shall determine whether the Office of the County Attorney is able to provide the representation for the person. The County Attorney shall advise the person whether or not there is a conflict which would prevent the Office of the County Attorney from representing the person. If the Office of the County Attorney can not represent the person, the person can then retain private counsel and be reimbursed attorney's fees and costs if authorized by this policy.

Any person who believes that he or she is allowed or entitled to payment for reasonable attorney's fees and costs pursuant to the provisions of this policy shall as a condition precedent to entitlement to such reimbursement, notify the County through its County Attorney, in writing within 10 days of the retention of a private attorney. Such notification shall include the reason for retention of a private attorney and recitation of the fee agreement. Thereafter, at anytime should fees and costs exceed \$5,000, such person shall immediately notify the

County Attorney in writing that such threshold amount has been expended and establish good cause why the threshold amount should be exceeded.

Subsequently, any person who believes he or she is entitled to reimbursement of attorney's fees and costs pursuant to this policy shall file within 30 days of conclusion of the matter a written request for such fees and costs with the County Attorney, which request shall at the minimum state:

- a. the name and current address of the person making the request;
- b. a description of the entity conducting the investigation or proceeding;
- c. the case number or file number of the investigation or proceeding, if known;
- d. a description of each count, charge and/or allegation made or being investigated;
- e. the date(s) that the alleged wrongful incidents are alleged to have occurred;
- f. the person's office or position of employment with the county on the dates described in (e.) above;
- g. a narration of the reasons why such person believes that the request meets the criteria set forth in this policy and that his or her attorney's fees and costs should be reimbursed by the county;
- h. the name(s), address, and telephone number of the attorney(s) representing such person against the counts, charges, and/or allegations described in (d.) above;
- i. a description of the fee arrangement or agreement between the person and his or her attorney(s); the amount of attorney's fees and costs paid to the date of the written request for attorney's

fees and costs for defense against the counts, charges, and/or allegations described in (d.) above; and the total balance due, if any, of all attorney's fees and costs that have been incurred in defense against the counts, charges, and/or allegations described in (d.) above; and

- j. such other information as the Board of County Commissioners and/or the County Attorney's Office may reasonably require.

In the alternative, such person may also request approval by the Board of County Commissioners to retain an outside attorney to be paid on a monthly basis, subject to all of the requirements of this Section. Such person shall submit the information set out in sub-paragraphs a. through j. to the County Attorney. The County Attorney shall prepare and present an agenda item for consideration by the Board. The County Attorney shall recommend to the Board an up front cap of the amount that is to be paid on a monthly basis, based on the particular legal issues related to the counts, charges and/or allegations. Once this cap is met, the County Attorney will bring an agenda item for the Board to decide whether to continue the monthly payments. Pursuant to Fla. Stat. 111.07, however, any attorney's fees paid from public funds for such person who is ultimately found to be personally liable by virtue of acting outside the scope of his or her employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the county in a civil action against such person.

SECTION 5.

Within a reasonable time following receipt of the written request for payment of attorney's fees and costs, the County Attorney shall prepare and present an agenda item for consideration by the Board. In the agenda item for the Board's consideration, the County Attorney shall include a recommendation on the applicability of this policy to the request payment of attorney's fees and costs. The Board may: (1) request additional relevant information from the applicant; (2) continue the request to a date and time certain; or (3) take action upon the

written request and determine if the attorney's fees and costs shall be reimbursed, and if so, in what amount.

If there are any areas of disputed facts, or where the County Attorney has a conflict of interest, the Board of County Commissioners will direct the Office of the County Attorney to request the President of the Hillsborough County Bar Association to select an attorney to volunteer on a pro bono basis to act as a Special Hearing Officer to render a recommendation with regard to the applicability of this policy. Hearings before the Hearing Officer will be open to the public. The Clerk shall make and preserve the record of the proceedings before the Hearing Officer.

SECTION 6.

Upon receipt of the written request, the County Attorney shall also communicate with the County's "insurance" providers to determine and advise the Board whether such "insurance" providers will indemnify the County for any attorney's fees and costs incurred by the applicant in defense against such counts, charges, or allegations.

SECTION 7.

Notwithstanding anything to the contrary stated or implied herein, this policy does not address or pertain to recall proceedings or to employee discipline or termination proceedings. In the event such recall, discipline or termination proceedings occur concurrently with the issues and/or proceedings described above, such recall, discipline or termination proceedings shall not affect the application of the policy to the above described non-recall, non-discipline or non-termination issues or proceedings.

SECTION 8.

This Policy shall become effective upon adoption and shall apply to all requests for reimbursement of attorney's fees and costs.

Approved by: Board of County Commissioners
Approval Date: January 9, 2013

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN THE
ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH
COUNTY AND RICHARD GARRITY FOR SERVICES AS
EXECUTIVE DIRECTOR**

This First Amendment to the Employment Agreement between the Commissioners of the Environmental Protection Commission of Hillsborough County, a political subdivision of the State of Florida (hereinafter referred to as "COMMISSION") and Richard Garrity ("EXECUTIVE DIRECTOR") is made and entered into this ____ day of _____, 2013, by and between the COMMISSION and the EXECUTIVE DIRECTOR, as follows:

WITNESSETH

WHEREAS, on December 13, 2012, the COMMISSION and the EXECUTIVE DIRECTOR entered into an Employment Agreement for Services as Executive Director ("Agreement"); and

WHEREAS, the parties seek to modify and amend the Agreement to include language regarding reimbursement of legal expenses; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, additional to those previously made in writing, the parties agree that Section Fourteen of the Agreement is amended in its entirety as specifically set forth below:

SECTION FOURTEEN: Indemnification

A. The COMMISSION shall defend, hold harmless, and indemnify the EXECUTIVE DIRECTOR against any tort, claim, demand, civil rights, or other legal action, arising out of any act, event, or omission occurring in the performance of the EXECUTIVE DIRECTOR's professional duties as EXECUTIVE DIRECTOR, except to the extent that the EXECUTIVE DIRECTOR acted in bad faith, or with malicious

purpose, or in a manner exhibiting wanton or willful disregard of human rights, safety, or property. The COMMISSION will provide defense for, and compromise or settle any such claim or suit, as it deems appropriate, and pay the amount of any settlement or judgment rendered thereon. This indemnification shall extend beyond termination of employment or other expiration of this Agreement, to provide full and complete protection to the EXECUTIVE DIRECTOR for acts undertaken or committed by the EXECUTIVE DIRECTOR in his capacity as Executive Director, regardless of whether receipt of notice or filing of any claim or lawsuit occurs during or following the EXECUTIVE DIRECTOR's employment with the County.

B. The COMMISSION will reimburse the EXECUTIVE DIRECTOR's reasonable attorney's fees and costs. Reasonableness of the EXECUTIVE DIRECTOR's attorney's fees and costs will be determined utilizing the process described in the BOCC policy on Reimbursement of Legal Expenses adopted contemporaneously with this amendment. As conditions precedent to the COMMISSION's reimbursement of the EXECUTIVE DIRECTOR's legal expenses, the EXECUTIVE DIRECTOR must comply with all notices and associated time frames required in the above referenced BOCC policy. Requests for reimbursement must be made in the manner and time frame provided by the BOCC policy. All information required by this BOCC policy must be provided prior to reimbursement.

IN WITNESS WHEREOF, the Commissioners of the Environmental Protection Commission of Hillsborough County, Florida, has caused this First Amendment to the Employment Agreement to be signed and executed in its behalf by its Chairman, and duly attested by its clerk, and the EXECUTIVE DIRECTOR has signed and executes this Agreement, both in duplicate, on the respective dates under each signature below. The remainder of the Agreement remains unchanged and is in full force and effect.

ATTEST: Pat Frank
Clerk of the Circuit Court

**ENVIRONMENTAL PROTECTION
COMMISSION**

By: _____
Deputy Clerk

By: _____
EPC Chairman Kevin Beckner

Date

ATTEST:

RICHARD GARRITY

Witness

Richard Garrity, PhD
Executive Director

Witness

APPROVED AS TO LEGAL
SUFFICIENCY:

Date

General Counsel

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: EPC Hearing Officer Replacement

Agenda Section: Consent Agenda

Division: Legal and Administrative Services Division

Recommendation: Ratify Agreement for Hearing Officer Services and Informational Report

Brief Summary: The Commission authorized the appointment of three hearing officers to serve on an as needed basis to hear administrative appeals to permits and other agency actions. The EPC Chairman appoints the hearing officers to new administrative appeals via a rotation schedule. In June of 2012 one of the hearing officers resigned creating a vacancy in the rotation. In coordination with the EPC Chairman, the EPC recently entered into an agreement with Steven Pfeiffer, Esq. to fill the hearing officer vacancy.

Financial Impact: Hearing Officers are only paid as needed and on an hourly basis out of existing funds. No additional funds required.

Background: In accordance with Section 1-2.07, Rules of the EPC, “[u]pon recommendation of the Executive Director, the Commission will appoint as many Hearing Officers as needed to hear appeals pursuant to section 9 of the EPC Act, and such other matters as designated by the Commission.” The Commission authorized the appointment of three hearing officers decades ago. The hearing officers serve on an as needed basis to hear and rule on appeals (conducted like civil trials) when a person challenges agency actions, such as: a permit, a permit denial, an enforcement order, or rulemaking. The EPC Chairman appoints the hearing officers to new administrative appeals via a rotation schedule.

In June of 2012, Hearing Officer Robert Fraser, Esq. tendered his resignation because he left private practice and accepted a full time position with a government agency; thus, he no longer could devote time to being an EPC hearing officer. The EPC was left with only two hearing officers (John Voelpel, Esq. and Vanessa Cohn, Esq.) to assign appeals to. The Legal Department advertised the EPC’s vacant hearing officer position and conducted interviews with several candidates. A recent appeal was filed and the EPC’s remaining two hearing officers recused themselves due to conflicts with the parties involved in the case.

Steven Pfeiffer, Esq., a former hearing officer and administrative law judge for the State of Florida, was offered and accepted the appointment. The EPC Chair executed an agreement for services on January 31, 2013. EPC staff requests that this agreement be ratified. Payment for Hearing Officer services comes from the existing budget and, since this appointment is to fill a vacant position and services are only as needed, it will not require any additional funding.

The EPC staff will continue to coordinate hiring and case specific appointment of hearing officers with the EPC Chairman, who traditionally appoints hearing officers.

List of Attachments: Agreement with S. Pfeiffer for Services as a Hearing Officer

THIS AGREEMENT, made and entered into on this 31 day of January, 2013 by and between the **ENVIRONMENTAL PROTECTION COMMISSION** of Hillsborough County (hereinafter referred to as "**Commission**"), and **STEVEN PFEIFFER**, Attorney at Law, (hereafter referred to as "**Hearing Officer**"),

WITNESSETH:

WHEREAS, the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended, authorizes the "**Commission**" to appoint a "**Hearing Officer**" to hear appeals from actions or decisions of the Executive Director and such other matters relating to the Act as referred by the "**Commission**", and

WHEREAS, said "**Hearing Officer**" must be a member of the Florida Bar and have some experience in or a working knowledge of environmental law, and

WHEREAS, the above named "**Hearing Officer**" has demonstrated to the "**Commission's**" satisfaction his/her qualifications to act in such a capacity,

NOW, THEREFORE, and in consideration of the mutual covenants and promises herein to be kept, paid and performed, the parties hereto agree as follows:

1. The "**Commission**" does appoint and employ the "**Hearing Officer**" as one of its hearing officers under the Hillsborough County Environmental Protection Act for a term of two (2) years commencing upon the above written date.
2. The "**Commission**" shall pay the "**Hearing Officer**" from the county general revenue fund upon periodic itemized billings, a compensation of one hundred dollars (\$100.00) for each hour spent in the service of the "**Commission**" as "**Hearing Officer**". Out-of-pocket expenses such as travel, long distance telephone charges and reproduction expenses shall be reimbursed to the "**Hearing Officer**" provided they are supported by proper documentation.
3. The "**Hearing Officer**" agrees to hear appeals from actions or decisions of the Executive Director in accordance with the Hillsborough County Environmental Protection Act and the Rules and Regulations promulgated thereto, and to hold hearings on such matters relating to the Act as may be referred by the "**Commission**".

It is understood that the "**Hearing Officer**" may decline acceptance of any particular case so as to avoid possible conflict of interest problems and/or to not unduly restrict the "**Hearing Officer**" in his/her private practice of law.

4. This agreement is automatically renewable for successive terms of two (2) years.

This agreement will terminate thirty (30) days following written notice by either party of its intent to terminate, or such longer period as may be agreed to by the parties.

In such event, the "Hearing Officer" shall exercise reasonable care so that the interest of any then-current appellant will not be jeopardized by the transfer of his/her case.

5. The "Commission" agrees to indemnify and hold harmless the "Hearing Officer" for any and all claims arising out of acts performed and decisions rendered in the course of carrying out the duties of the "Hearing Officer" and which would be subject to the protection of Chapter 768.28, Florida Statutes. It is understood that the "Commission" will provide legal defense for the Hearing Officer in the event that such legal actions are instituted against him/her.

6. This Agreement embodies the entire agreement and understanding between the parties and is subject to change, alteration or modification only by written agreement between the parties.

IN WITNESS WHEREOF, the "Commission" and the "Hearing Officer" have executed this Agreement on the date first above written.

"HEARING OFFICER"

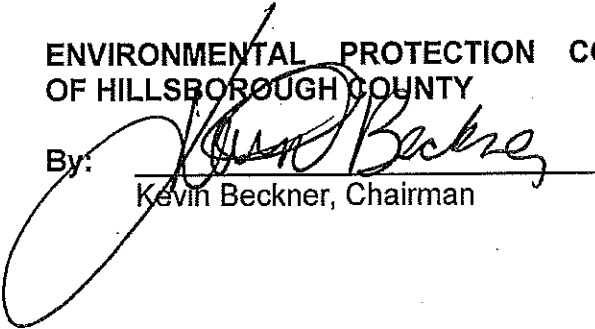
By:


Steven Pfeiffer

"COMMISSION"

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

By:


Kevin Beckner, Chairman

WITNESS:

By:



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EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: Acknowledging the student recipient of EPC's Environmental Merit Award at the 33rd Annual Hillsborough Regional Science, Technology, Engineering and Mathematics Fair

Consent Agenda _____ **Regular Agenda** x **Public Hearing** _____

Division: Agency Wide

Recommendation: Acknowledge student award.

Brief Summary: On February 13th, 2013 staff of the EPC recognized a high school student for their outstanding science project at the 33rd Annual Hillsborough Regional STEM Fair.

Financial Impact: Financial Impact to Fund is \$76 to be paid out of existing funds.

Background:

On February 13, 2013 staff of the EPC recognized Margaret Parrish, a student at Chamberlain High School, for her outstanding science project at the 33th Annual Hillsborough Regional Science, Technology, Engineering and Mathematics Fair.

She received an EPC certificate and will receive a one-year membership to the Florida Aquarium for receiving EPC's Environmental Merit Award.

List of Attachments: [List any attachments or put none at the end of the background]

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: Final Order Hearing regarding the Baldor vs EPC boatlift permitting appeal (EPC Case No. 12-EPC-015)

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: Appellant Javier Baldor resides on a canal in Tampa and applied to the EPC for a boatlift permit. The application to construct the boatlift was denied based on Tampa Port Authority rules (administered by the EPC) due to the structure encroaching an undisputed seventeen (17) feet into the neighbor's setback and Baldor failing to obtain an "affidavit of no objection" from the neighbor. Mr. Baldor challenged the denial and a Summary Hearing was conducted on February 20, 2013. The presiding Hearing Officer issued a Recommended Order on March 1, 2013, upholding the denial of a Minor Work Permit for the construction of a boatlift and pilings on Sovereignty Lands within the neighbor's setback. Mr. Baldor has filed Exceptions to the Recommended Order based on grounds that the original structure was "grandfathered", and under the rules, can be replaced without requiring an affidavit of no objection from the neighbor. The EPC has filed a Response to Baldor's Exceptions. 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 uphold the Recommended Order and deny the application. Mr. Baldor's counsel will present argument as to why the Commission should reverse or modify the Recommended Order and approve the application. 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 Florida Department of Environmental Protection as part of its streamlined permitting program. Appellant Javier Baldor lives on a canal in Tampa and applied to the EPC for authorization (a/k/a Minor Work Permit) to construct a boatlift and pilings adjacent to his existing dock on his property.

The Minor Work Permit application was denied based on the TPA Submerged Land Management Rules that address minimum setback requirements from neighbor's property unless an affidavit of no objection is obtained from the neighbor. In this case, the neighbor objected to Mr. Baldor's boatlift encroaching into the setback an undisputed 17 feet. Mr. Baldor challenged the denial on grounds that the rule allowed his boatlift, which had been removed for a period of approximately two years, to be "grandfathered" and rebuilt without the need to obtain an affidavit of no objection from the neighbor. The case was assigned to an EPC hearing officer and the Parties agreed to hold a Summary Hearing before the Hearing Officer. In accordance with sections 1-2.32 (i), Rules of the EPC,

the summary hearing was conducted on February 20, 2013, and a Recommended Order (attached) was issued by the Hearing Officer on March 1, 2013, upholding the denial to construct the boatlift as requested by Mr. Baldor.

Mr. Baldor, through his counsel, has filed Exceptions to the Recommended Order (attached) asking the Commission to reverse the Recommended Order based on grounds that the previous boatlift structure was grandfathered under the rules. The Executive Director has filed a Response (attached) to the Baldor 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 Baldor Exceptions to the Recommended Order, and the Executive Director's Response to the Exceptions. 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 affirm the Recommended Order and deny the application. Mr. Baldor will present argument as to why the Commission should reverse the Recommended Order and grant the application. 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**

JAVIER BALDOR,

Appellant,

EPC Case No: 12-EPC-015

vs.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,**

Appellee.

**RECOMMENDED ORDER
WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Upon filing of individual Motions for Summary Recommended Order and for Summary Final Order, and the Hearing Officer having heard the argument of counsel and taken evidence and being otherwise fully advised in the premises, the Hearing Officer has made this recommendation on Appellant's Notice of Appeal of the Environmental Protection Commission of Hillsborough County (hereinafter "EPC") Executive Director's denial of an application for a Minor Work Permit for the construction of a boatlift on jurisdictional surface waters (hereinafter "Sovereignty Lands") in Hillsborough County, Florida. The Appellant Javier Baldor (hereinafter "Appellant") asserted that the EPC Executive Director erred in denying the Minor Work Permit for the construction of a boatlift adjacent to the Appellants' property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "the Property"). The EPC Executive Director asserts that the denial issued on October 9, 2012 should be upheld by the Hearing Officer based on 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.

APPEARANCES

For Appellant: Anthony Cuva, Esq.
Bajo Cuva Cohen & Turkel, P.A.
100 N. Tampa St., Suite 1900
Tampa, FL 33602

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 to be determined in this appeal is whether the Appellant has demonstrated reasonable assurance that the proposed boatlift structure complies with the SLM Rules. More specifically, does the proposed boatlift structure comply with Rule Subsection II.I.3, SLM Rules, wherein “[w]ater dependant structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules.” The ultimate question is whether a structure that has been removed for over two years can still be considered grandfathered under the rules so as to allow it to be rebuilt in the same location where it otherwise would not be allowed under the applicable rules.

PRELIMINARY STATEMENT

On March 20, 2012, the Appellant submitted to the EPC Executive Director, 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”), an application for a Minor Work Permit for the

construction of boatlift pilings and a boatlift on Sovereignty Lands adjacent to the Appellant's Property.

Based on the structure encroaching an undisputed seventeen (17) feet into the neighbor's setback and the Appellant's failure to obtain an "affidavit of no objection" from the neighbor, the application was denied. The Appellant then filed this appeal challenging the denial of the application. This proceeding is designed to formulate final agency action on the Appellant's application for marine construction activities in Sovereignty Lands under the Tampa Port Authority Submerged Lands Management Rules (hereinafter "SLM Rules") and the EPC Wetland Rule Chapter 1-11 and the Basis of Review adopted thereunder. No controversy exists in this matter under the EPC's Wetland Rule Chapter 1-11 and the Basis of Review. The applicable regulations in controversy include only the Tampa Port Authority Enabling Act and the adopted SLM Rules, specifically the *grandfathering* language in the SLM Rules.

FINDINGS OF FACTS

(Based on Stipulated Facts of the parties agreed on February 16, 2013)

1. The Appellee Environmental Protection Commission of Hillsborough County (hereinafter "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"). The EPC also has authority to implement the Tampa Port Authority (hereinafter "TPA") Submerged Lands Management Rules (hereinafter "SLM Rules") and issue Minor Work permits on behalf of the TPA 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."

2. Appellant Javier Baldor owns property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "Property").

3. Mr. Baldor purchased the Property in October 2005.

4. The Property is located on a canal identified as "Sovereignty Lands" owned by the Tampa Port Authority (hereinafter "TPA") and under its marine construction regulatory authority.

5. The Appellant has standing in this proceeding.

6. A dock currently exists at the Property.

7. The dock was originally permitted by the TPA in 1987 under a Minor Work permit. The 1987 TPA permit, identified as #87-161, was issued on June 4, 1987 and authorized the original construction of the dock.

8. On March 1, 1994, a revision to the 1987 permit was issued, identified as permit #94-043 which authorized the addition of a boatlift to the existing structure. The dock and boatlift that existed on Mr. Baldor's property were constructed pursuant to valid permits from the Authority.

9. Since 1992, the parcel of property to the east of the Property (and closest to the boatlift) has been owned Mr. Paul Byrum. At the time the boatlift was constructed in 1994, Mr. Byrum owned the adjacent property and presumably did not object to the construction of the boatlift.

10. The boatlift was constructed and existed on the Property until Mr. Baldor removed it in mid-December 2009 or early January 2010.

11. Mr. Baldor removed the boatlift because it was dilapidated and intended to replace it.

12. The boatlift was not removed because of any particular emergency or storm event.

13. The total length of the Appellant's shoreline is 122.5 feet.

14. On March 20, 2012, Mr. Baldor submitted an application to the EPC for a Minor Work permit to "replace boatlift pilings and lift."

15. The proposed boatlift would be constructed in the exact location as the original permitted structure was located. The proposed boatlift would be located within approximately eight (8) feet of the neighboring property to the east's (hereinafter referred to as "Neighboring Property") riparian line.

16. The riparian line at the shoreline between the Appellant's Property and the Neighboring Property extends straight out from the true property line and runs approximately 90 degrees off the shoreline heading due north at 0 degrees.

17. The adjacent property owner, Mr. Byrum, objected to the application and has not submitted an affidavit of no objection.

CONCLUSIONS OF LAW

1. The assigned Hearing Officer has jurisdiction over the parties 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") and 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").

2. The EPC has jurisdiction over the Tampa Port Authority Enabling Act, Chapter 95-488, Laws of Florida, and the SLM Rules pursuant to the TPA Delegation Agreement.

3. 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."

4. Subsection V.A.3.a.(2)(c), SLM rules provides that structures located on properties with a shoreline frontage of greater than 80 feet must maintain a minimum structural setback distance of 25 feet from the neighboring riparian lines. Exceptions to the setback requirements set forth above may be granted if the affected adjacent property owner provides an affidavit of no objection (AONO) or if the proposed structure is a subaqueous utility line.

5. Subsection II.I.3, SLM Rules, provides that wherein "[w]ater dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules." For the structure to be eligible for grandfathering under this section, the structure must presently exist at the time of the first EPC staff site visit after submittal of an application so as to verify the exact location and size of the structure.

6. The proposed boatlift cannot be permitted under Subsection V.A.3.a.(2)(c), SLM Rules, because the proposed boatlift is intended to be 17 feet inside of the 25 foot setback and the neighbor has not signed the AONO.

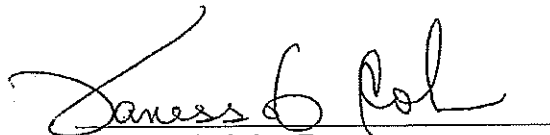
7. The proposed boatlift and its location cannot be considered grandfathered under Subsection II.I.3, SLM Rules, because the boatlift is not presently there and has been removed from the area for over two years prior to the application being submitted.

RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order upholding the October 9, 2012 denial of a Minor Work Permit for the construction of a boatlift and pilings on Sovereignty Lands within the neighbor's 25 foot setback.

Respectfully submitted,

Dated: March 1, 2013



Vanessa N. Cohn, Esq.
Hearing Officer for
Environmental Protection Commission of
Hillsborough County
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cc: Anthony J. Cuva
Counsel for Appellant Mr. Baldor

cc: Andrew Zodrow
Counsel for Appellee EPC of Hillsborough County

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

JAVIER BALDOR,

Appellant,

EPC Case No: 12-EPC-015

vs.

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,

Appellee.

EXCEPTIONS TO RECOMMENDED ORDER

Appellant Mr. Javier Baldor files the following exceptions to the Recommended Order signed by Hearing Officer Vanessa Cohn on March 1, 2013 (hereinafter "Recommended Order") and respectfully requests that the Environmental Protection Commission of Hillsborough County ("EPC") reject the Recommended Order as proposed by the hearing officer. As grounds Baldor states:

Appellant Mr. Javier Baldor appeals the Denial of Application for Minor Work Permit # 53790 to replace a boatlift. The sole issue in this appeal is whether Mr. Baldor's boatlift is considered a grandfathered structure under the Submerged Lands Management Rules ("SLM Rules"). Mr. Baldor's boatlift meets the plain language definition of a "Grandfathered Structure" under the SLM Rules, and therefore, must be considered grandfathered. The SML Rules section I.(3) provides:

GRANDFATHERED STRUCTURES: Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

It is undisputed that Mr. Baldor's boatlift is a water dependent structure as defined by the SLM Rules and was constructed pursuant to valid work permits from the Authority in 1987 and 1994 respectively. (Stipulated Facts ¶ 8 at Tab 2). The rules governing statutory construction mandate that a Court apply the "plain" meaning of a statute.

The Recommended Order must be rejected because it injects specific language (see detail in section titled Exceptions to the Recommended Order section below) into the definition of grandfathered structures which is not present within the SLM Rules.

I. Factual Background

Following is a brief summary of the historical background for the case being appealed herein:

- Mr. Baldor is the owner of property located on a canal at 4923 Lyford Cay Road, Tampa, Florida.
- At the time Mr. Baldor purchased the property in 2005, a dock and boatlift existed on the property. There is no dispute that the dock and boatlift were constructed pursuant to a valid permit.
- In December 2009, Mr. Baldor hired a marine contractor to remove and replace the boatlift. The marine contractor removed the boatlift sometime in late December 2009 or early January 2010. Notably, the marine contractor left two (2) of the four (4) poles remaining from the boatlift. In December of 2011, Mr. Baldor undertook to replace his boatlift.
- On January 16, 2012, Mr. Baldor's marine contractor contacted the EPC and advised them in writing that the boatlift had been removed and inquired whether it could be replaced.
- The EPC confirmed in writing on March 16, 2012 to the Mr. Baldor, the following statement after having consulted with the Tampa Port Authority:

We consulted with the Port on this matter and we all agree that as long as the dock was previously permitted, it can be replaced in-kind without the Affidavit of No Objection sign-off. We will simply notice the neighbors

with the standard adjacent property owner (APO) letter, which will allow them to comment but does not give them the power to stop the project as the [Affidavit of No Objection] sign off does. Let me know if you need anything else.

- Mr. Baldor and his marine contractor submitted an application for Minor Work Permit. Thereafter, the EPC advised Mr. Baldor that he could not go forward with replacing the boatlift because the adjacent property owner objected to the permit. Worth noting, the adjacent property owner objecting in this case is the same owner that approved this boatlift structure in 1994 according to the valid permit.
- On October 9, 2012, the EPC issued a Denial of the Application for Minor Work Permit and this appeal ensued.

Mr. Baldor's boatlift is considered a "Grandfathered Structure" under the existing definition found in the Submerged Lands Management Rules ("SLMR"), and therefore, Mr. Baldor is entitled to replace it.

II. Exceptions to the Recommended Order

Mr. Baldor takes exception to the Recommended Order in the following respects:

1. The Statement of the Issue states that the ultimate question in this appeal is "whether a structure that has been removed for over two years can still be considered grandfathered." There is simply no language within the definition of grandfathered structure that requires a partially removed grandfathered structure to be replaced within a period of time. The structure was partially removed. Moreover, the issue in this appeal should be simply reading the plain language of the definition of grandfathered structures and determining whether Mr. Baldor's boatlift should be considered grandfathered for the purpose of replacing it in the exact location that it had existed for sixteen (16) years.

2. Mr. Baldor takes exception to paragraph 4 of the conclusions of law because it enumerates exceptions to the setback requirements but fails to state that grandfathered structures are excepted from the setback requirements.

3. Under the conclusion of law, Mr. Baldor takes exception to paragraph 5, in that the conclusion improperly injects very specific language into the definition of grandfathered structure that is not contained within the SLM rule. The conclusion of law states:

For the structure to be eligible for grandfathering under this section, the structure must presently exist at the time of the first EPC staff site visit after submittal of an application so as to verify the exact location and size of the structure.

4. This language is not found anywhere within the SLM Rules and imposes a restriction on grandfathered structures that is not within the plain meaning of that statute. “[I]t is a basic principle of statutory construction that courts ‘are not at liberty to add words to statutes that were not placed there by the Legislature.’” *L.G. v. State*, 939 So. 2d 1141, 1143 (Fla. Dist. Ct. App. 2006) *citing*, *Seagrave v. State*, 802 So.2d 281, 287 (Fla.2001) (quoting *Hayes v. State*, 750 So.2d 1, 4 (Fla.1999)). Mr. Baldor takes exception to paragraph 6 of the conclusions of law, because the adjacent property owner does not have the right to sign an Affidavit of No Objection (AONO) if the boatlift is considered a grandfathered structure which was confirmed in writing by the EPC to Mr. Baldor on March 16, 2012.

5. Mr. Baldor takes exception to paragraph 7, because like paragraph 5, it improperly and arbitrarily adds words to the definition of grandfathered structure.

III. Nature of Relief Sought

Accordingly, Mr. Baldor seeks to have the boatlift deemed a “Grandfathered Structure,” Denial of the Minor Work Permit reversed and the Minor Work Permit reinstated so he can replace his boatlift in the exact location that it had existed for sixteen (16) years.

IV. Memorandum of Law

- a. **There is No Time Provision in the Grandfathered Structures Provision that requires Replacement of the Grandfathered Structure within a Specified Period of Time.**

The sole issue in this appeal is whether Mr. Baldor's boatlift was a "Grandfathered Structure" within the meaning of the SML Rules. The SML Rules section I.(3) provides:

GRANDFATHERED STRUCTURES: Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

In the present case, it is undisputed that Mr. Baldor's boatlift is a water dependent structure as defined by the SLM Rules and was constructed pursuant to a valid permit from the Authority. (Stipulated Facts ¶ 8 at Tab 2). The rules governing statutory construction mandate that a Court (the EPC here) apply the "plain" meaning of a statute. There is simply no time limit that requires removed grandfathered structured to be replaced within a certain time frame. Thus, the EPC must apply the plain and unambiguous language of the Rule. Moreover, Courts (the EPC here) are not at liberty to add words to statutes that were not placed there by the legislature. *See L.G. v. State*, 939 So.2d 1141, 1143 (Fla. 1st DCA 2006).

The United States Supreme Court held in *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450, 122 S. Ct. 941, 950, 151 L. Ed. 2d 908 (2002):

As in all statutory construction cases, we begin with the language of the statute. The first step "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." (*citations omitted*). The inquiry ceases "if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" (*Citations omitted*).

In *Connecticut Nat. Bank v. Germain*, 503 U.S. 249 (1992), the Supreme Court stated:

[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says

there. (*Citations omitted*). When the words of a statute are unambiguous, then, this first canon is also the last: “judicial inquiry is complete.”

Florida Courts apply the same rule:

We conclude we are bound by the plain wording of the statute. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.

Dolly Bolding Bail Bonds v. State, 787 So. 2d 73, 74 (Fla. 2d DCA 2001).

In this case, the plain and unambiguous language of the grandfathered structures provision in the SML Rules provides that “structures constructed pursuant to valid permits . . . shall be exempt from these Rules.” Mr. Baldor’s boatlift is a Grandfathered Structure that is exempt from the setback requirements of the Rules. Accordingly, the Denial must be reversed and the Minor Work Permit reinstated.

b. Under the EPC’s own interpretation of the Grandfathered Structures Provision, Mr. Baldor’s boatlift presently exists.

Here, Appellant Mr. Baldor has two (2) of the four (4) pilings existing from the boat lift. (See Exhibit 3(e)). One day after the adjacent property owner in this case notified the EPC of his objection, the EPC added further confusion by attempting to clarify what type of work does not require a permit. In an e-mail dated April 26, 2012 addressed to marine contractors, the EPC advised that the structure has to be existing at the time of the application (despite the fact that the SLM Rules do not contain such language). The EPC further stated that if “50% of boatlift pilings (usually 2)” exist then a Minor Work Permit is not required. (See Exhibit 3(f)). Thus, under the EPC’s arbitrary guidelines, Mr. Baldor’s boatlift exists and is considered grandfathered because two of the four pilings are present.

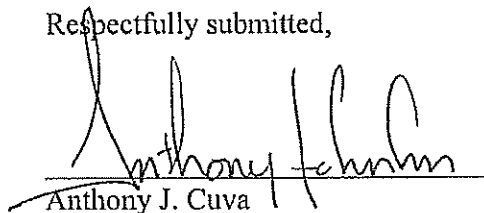
- c. **Should the EPC adopt the Recommended Order, it would lead to unjust results.**

The Recommended Order states at paragraph 5 that grandfathered “structures must presently exist at the time of the first EPC staff site visit after submittal of an application so as to verify the exact location and size of the structure.” This language is improperly added into the Rule by the hearing officer and is not contained anywhere within the SLM Rules. The EPC arbitrarily adds such language and arbitrarily applies such language. The rationale as put forth by the EPC is that EPC staff must verify the exact location and size of the structure. Here, the exact location of the boatlift can be easily verified through Google Earth and the previously existing permit. To accept the arbitrary and retroactive amendment of legal statutes such as the SLM rules in this case would establish a haphazard and unfair precedent. Accordingly, the EPC should permit Mr. Baldor to replace his grandfathered boat lift. Lastly, for the record, there has never been a documented adverse impact on the adjacent objecting property owner. The boatlift existed in the same location for over sixteen (16) years without any documented complaint or issue by the adjacent property owner originally approved the same boatlift structure in 1994.

V. Conclusion

Appellant submits its Motion for Summary Disposition which was to the hearing officer for further clarification and review by the EPC Commissioners. Because the Appellant Mr. Baldor's boatlift is a Grandfathered Structure as defined by the Submerged Lands Management Rules and the EPC's own interpretation of the Grandfathered Structures Provision, the Application for Minor Work Permit to replace the pilings and boatlift must be reversed.

Respectfully submitted,



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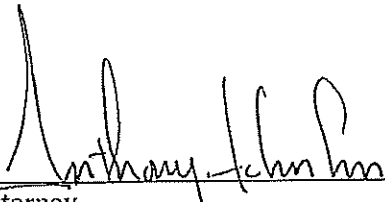
CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail this 7th day of March, 2013, to:

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Attorney

cc: Mr. Javier Baldor

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

JAVIER BALDOR,

Appellant,

EPC Case No: 12-EPC-015

vs.

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,

Appellee.

APPELLANTS' MOTION FOR SUMMARY FINAL ORDER

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I. Introduction:

Appellant Mr. Javier Baldor appeals the Denial of Application for Minor Work Permit # 53790 and respectfully requests this Court enter a Recommended Final Summary Order to reinstate the Minor Work Permit because the boatlift at issue is a Grandfathered Structure. Rules of the Environmental Protection Commission of Hillsborough County, 1-2.32(i) provides that “any party may move for recommended summary final order whenever there is no issue as to any material fact.” Pursuant to 1-2.32(i), Appellant Mr. Baldor submits this motion for summary final order. Here, there is no genuine issue as to any material fact.

This appeal is based on:

1. Interpretation of the “Grandfathered Structures” provision of the Submerged Lands Management Rules (“SLM Rules”). Appellant Mr. Baldor’s boatlift meets the definition of the Grandfathered Structures provision of the SLM Rules. The SLM Rules do not provide any Time Provision for the replacement of a Grandfathered Structure.
2. The EPC advised Mr. Baldor in writing On March 16, 2010² that: “We consulted with the Port on this matter and we all agree that as long as the dock was previously permitted, it can be replaced in-kind without the Affidavit of No Objection sign-off.”
3. The Appellant Mr. Baldor meets the new arbitrary Grandfather Provision guidelines that the EPC sent to all Marine Contractors on April 26, 2012. The EPC stated that if 50% of boatlift pilings remain then it would be sufficient to be considered a structure to be in existence at the time of the application request. In this case, Mr. Baldor has two of the four pilings remaining and even under the EPC’s own interpretation of the rule would

qualify to have an existing structure which is eligible for an application for a Minor Work Permit.

This motion for summary final order will detail and support the Appellants case for the reversal of the denial of Application for Minor Work Permit to replace the pilings and boatlift.

As grounds Appellant Mr. Baldor states:

II. Summary:

Mr. Baldor is the owner of property located on a canal at 4923 Lyford Cay Road, Tampa, Florida. At the time Mr. Baldor purchased the property in 2005, a dock and boatlift existed on the property. There is no dispute that the dock and boatlift were constructed pursuant to a valid permit. In December 2009, Mr. Baldor hired a marine contractor to remove and replace the boatlift. The marine contractor removed the boatlift sometime in late December 2009 or early January 2010. Notably, the marine contractor left two (2) of the four (4) poles remaining from the boatlift. In December of 2011, Mr. Baldor undertook to replace his boatlift. On January 16, 2012, Mr. Baldor's marine contractor contacted the EPC and advised them in writing that the boatlift had been removed and inquired whether it could be replaced. The EPC confirmed in writing that it and the Tampa Port Authority both agreed that the boatlift could be replaced. Mr. Baldor and his marine contractor submitted an application for Minor Work Permit. The EPC approved the Minor Work Permit. (See Tab 3(c) – Minor Work Permit). [REDACTED]

[REDACTED] On October 9, 2012, the EPC issued a Denial of the Application for Minor Work Permit and this appeal ensued. Mr. Baldor's boatlift is considered a "Grandfathered Structure" under the existing definition found in the Submerged Lands Management Rules ("SLMR"), and therefore, Mr. Baldor is entitled to replace it.

III. Statement of Facts

In addition to the Stipulated Facts the Appellant, Mr. Baldor submits the following Statement of Facts:

1. Mr. Baldor is the owner of the property located at 4923 Lyford Cay Road, Tampa, Florida. The property was purchased in 2005 and is located on a canal.
2. At the time that Mr. Baldor purchased the property, there was a dock and boatlift on the property. (See Tab 3(a) - Aerial Photograph of Property).
3. There is no dispute that the dock and the boatlift were constructed pursuant to a valid work permits in 1987 and 1994 respectively. (See Stipulated Facts ¶ 8 – Tab 2).
4. The dock still exists on the property and is within 8 to 15 feet of the neighboring property line. (See Exhibit at Tab 3(c) – Aerial Photograph of Property in Present Condition).
5. The neighboring property 4921 Lyford Cay is owned by Mr. Paul Byrum (“Byrum”). There is not a dispute regarding the dock. It is merely the boatlift that is at issue here.
6. Byrum has owned the property since 1992. The boatlift on Mr. Baldor’s property was installed pursuant to a valid permit issued in 1994. Byrum told the Appellant, Mr. Baldor that he did not object to the initial installation of the boatlift in 1994. The boatlift existed on the property from 1994 through 2010.
7. In 2010, the Appellant Mr. Baldor undertook to remove and replace the boatlift. (See Exhibit at Tab 3(b)). It is noteworthy that the Proposal from Mr. Baldor’s marine contractor, Waterfront Engineering Inc. specifically states to “Remove Old Lift and Pilings” and to “Install New” Lift. It was Mr. Baldor’s intention to remove the old lift and replace it with a new lift.
8. Pursuant to that Proposal, Waterfront Engineering removed the two outboard pilings and the lift. The two inboard pilings remain, that is, the two of the four boatlift pilings along the

dock still remain. (See Exhibit 3(e)) - Photograph of dock in present condition with (2) two of the (4) four boatlift pilings remaining).

9. Because Appellant Mr. Baldor was busy with work, renovation of a new home and caring for children, he did not undertake to replace the boatlift until December 2011.

10. At that time, the Appellant's marine contractor, Waterfront Engineering contacted the EPC to determine whether he could replace the previously removed boatlift in the same footprint. The marine contractor advised the EPC in writing that the boatlift had been previously removed. (See Exhibit at Tab 3(f)(email dated January 16, 2012, wherein the marine contractor states: "a picture of the existing boatlift, which has since been removed, is attached").

11. Thereafter, on March 15, 2012, the marine contractor sent an email to the EPC stating:

This is follow up to our conversation yesterday regarding Mr. Baldor's boat lift. As we reviewed, the boat lift was installed in 1994 under [Tampa Port Authority] permit #94-043. Can you please provide me confirmation that the EPC will not require an "Affidavit of No Objection" as long as the boat lift is replaced at the exact location as the existing permitted structure?

(See Exhibit at Tab 3(f)).

12. The EPC confirmed in writing on March 16, 2012 to the Appellant Mr. Baldor, the following statement after having consulted with the Tampa Port Authority:

We consulted with the Port on this matter and we all agree that as long as the dock was previously permitted, it can be replaced in-kind without the Affidavit of No Objection sign-off. We will simply notice the neighbors with the standard adjacent property owner (APO) letter, which will allow them to comment but does not give them the power to stop the project as the [Affidavit of No Objection] sign off does. Let me know if you need anything else.

(See Exhibit at Tab 3(f)).

13. Thus, both the EPC and Tampa Port Authority had agreed that the boatlift could be replaced pursuant to the previously issued permit.

14. [REDACTED]

[REDACTED] the EPC reversed its position and advised Mr. Baldor that he could not replace his boatlift due to an objection from the neighbor, Byrum. This objection would adversely and unnecessarily, require the Appellant Mr. Baldor to move the present position of the boatlift. The financial impact to the Appellant Mr. Baldor would be on the order of triple the costs of the installation. Moreover, if Mr. Baldor were to be required to move the lift to the finger portion of his presently existing dock which is only 2 ½ feet wide it would pose a dangerous condition for loading and off-loading passengers including the Appellants' younger children.

15. More importantly, the boatlift is a "Grandfathered Structure" pursuant to the definition set forth in the applicable Submerged Lands Management Rules (SLM Rules) and, therefore, Mr. Baldor is entitled to replace the boatlift irrespective of the neighbor's objections.

16. Nonetheless, on October 9, 2012 the EPC issued a Denial of the Application for Minor Work Permit #53790. The only rationale provided for in the Denial is the boatlift is not considered a "Grandfathered Structure" because it was removed two years prior to the application for the proposed replacement of the boatlift. (See Tab 1).

17. The sole issue in this case is whether the boatlift is considered a "Grandfathered Structure" under the SLM Rules. The SML Rules section I.(3) provides:

GRANDFATHERED STRUCTURES: Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

It is undisputed that Mr. Baldor's boatlift is a water dependent structure as defined by the SLM Rules and was constructed pursuant to a valid permit from the Authority. (Stipulated Facts ¶ 8 at Tab 2). The rules governing statutory construction mandate that a Court apply the "plain" meaning of a statute. There is simply no time limit that requires removed grandfathered

structured to be replaced within a certain time frame. This will be further detailed in Section V.

Memorandum of Law.

18. It is noteworthy that [REDACTED] [REDACTED] the EPC confirmed in writing on April 26, 2012 to marine contractors, that if 50% of boatlift pilings remain then it would be sufficient to be considered a structure to be in existence at the time of the application request. (See Exhibit at Tab 3(f)). In this case, Mr. Baldor has two of the four pilings remaining and even under the EPC's own interpretation of the rule would qualify to have an existing structure which is eligible for an application for a Minor Work Permit. This email underscores the unpredictability and inconsistencies created when the EPC imposes restrictions within the Grandfathered Structured provision of the SLM Rules. The Grandfathered Structured provision is clear and unambiguous and if the EPC wishes to clarify it and the Tampa Port Authority, have the authority to amend the Rules.

19. Appellant Mr. Baldor incorporates the Stipulated Facts herein by reference. (See Tab 2)

IV. Nature of Relief Sought

Mr. Baldor seeks to have the boatlift deemed a "Grandfathered Structure," Denial of the Minor Work Permit reversed and the Minor Work Permit reinstated so he can replace his boatlift.

V. Memorandum of Law

a. **There is No Time Provision in the Grandfathered Structures Provision that requires Replacement of the Grandfathered Structure within a Specified Period of Time.**

The sole issue in this appeal is whether Mr. Baldor's boatlift was a "Grandfathered Structure" within the meaning of the SML Rules. The SML Rules section I.(3) provides:

GRANDFATHERED STRUCTURES: Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

In the present case, it is undisputed that Mr. Baldor's boatlift is a water dependent structure as defined by the SLM Rules and was constructed pursuant to a valid permit from the Authority. (Stipulated Facts ¶ 8 at Tab 2). The rules governing statutory construction mandate that a Court apply the "plain" meaning of a statute. There is simply no time limit that requires removed grandfathered structured to be replaced within a certain time frame. Thus, the Court here must apply the plain and unambiguous language of the Rule.

The United States Supreme Court held in *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450, 122 S. Ct. 941, 950, 151 L. Ed. 2d 908 (2002):

As in all statutory construction cases, we begin with the language of the statute. The first step "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." (*citations omitted*). The inquiry ceases "if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" (*Citations omitted*).

In *Connecticut Nat. Bank v. Germain*, 503 U.S. 249 (1992), the Supreme Court stated:

[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. (*Citations omitted*). When the words of a statute are unambiguous, then, this first canon is also the last: "judicial inquiry is complete."

Florida Courts apply the same rule:

We conclude we are bound by the plain wording of the statute. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.

Dolly Bolding Bail Bonds v. State, 787 So. 2d 73, 74 (Fla. 2d DCA 2001), citing, *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984) (quoting *A.R. Douglass, Inc. v. McRaney*, 102 Fla. 1141, 137 So. 157, 159 (1931)).

In this case, the plain and unambiguous language of the GRANFATHERED STRUCTURES provision in the SML Rules provides that “structures constructed pursuant to valid permits . . . shall be exempt from these Rules.” Mr. Baldor’s boatlift is a Grandfathered Structure that is exempt from the setback requirements of the Rules. Accordingly, the Denial must be reversed and the Minor Work Permit reinstated.

b. The EPC should not be permitted to impose a time period from other sections of the SLM Rules into the Grandfathered Structures section.

In its Denial the EPC states that, “[a] Minor Work Permit is valid for one year and can be extended up to three years upon request.” Here, the EPC will argue that the Minor Work Permit’s one year duration should be imposed upon the Grandfathered Structures provision. However, there is no time limit restriction within the Grandfathered Structures provision. And the plain meaning of that section must be applied.

Moreover, the EPC admits that a Minor Work Permit can be extended up to three years upon request. Thus, had Mr. Baldor (or his marine contractor) had actual notice (or any reason to believe) that by removing the two of four of the pilings that it would not be able to replace the pilings and boatlift, they would have left the poles or requested an extension of time in which to replace the boatlift. Here, the EPC cannot now, arbitrarily and retroactively, impose the timing provisions of the Minor Work Permit into the Grandfathered Structures provision

Indeed, to impose a time period into the SML Rule governing Grandfathered Structures would prejudice Mr. Baldor, all owners of grandfathered structures, and marine contractors. Under the EPC's interpretation of the Rule once a grandfathered structure is removed it is no longer considered grandfathered. Thus, under this interpretation, if a storm were to pass and eviscerate existing grandfathered structures they could not be replaced. Thus, in this case, where two of the pilings were removed with the intention of replacing the boatlift and the Appellant undertook to replace the pilings and boatlift, the Court must require the EPC to follow the plain language of what is defined as a Grandfathered Structures.

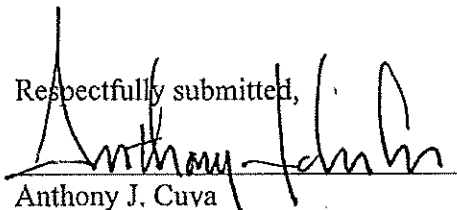
c. Under the EPC's own interpretation of the Grandfathered Structures Provision, Mr. Baldor's boatlift presently exists.

After Appellant Mr. Baldor was advised that he could not replace his boatlift, the EPC attempted to clarify its arbitrary interpretation of Grandfathered Structures provision. The EPC advised that the structure has to be existing at the time of the application (despite the fact that the SLM Rules do not contain such language). The EPC further clarified that if "50% of boatlift pilings (usually 2)" exist then the Grandfathered Structure exists for the purpose of Application for a Minor Work Permit. (See Exhibit 3(f)). Here, Appellant Mr. Baldor has two (2) of the four (4) pilings existing from the boat lift. (See Exhibit 3(e)). Thus, under the EPC's new arbitrary guidelines for existing Grandfathered Structures, Mr. Baldor's boatlift exists and is considered grandfathered because two of the four pilings are present.

VI. Conclusion

Because the Appellant Mr. Baldor's boatlift is a Grandfathered Structure as defined by the Submerged Lands Management Rules and the EPC's own interpretation of the Grandfathered Structures Provision, the Application for Minor Work Permit to replace the pilings and boatlift must be reversed.

Respectfully submitted,



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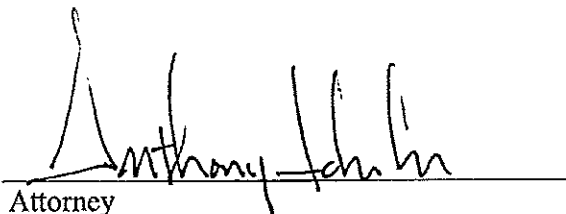
Certificate of Service

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail this 17th day of December, 2012, to:

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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

JAVIER BALDOR,

Appellant,

EPC Case No: 12-EPC-015

vs.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,**

Appellee.

**APPELLEE ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY'S RESPONSE TO APPELLANT'S EXCEPTIONS
TO THE RECOMMENDED ORDER OF THE 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 this response to the Appellant's exceptions to the Hearing Officer's Recommended Order dated March 1, 2013 and states as follows:

On March 1, 2013, the assigned Hearing Officer entered a Recommended Order in this case recommending that a Final Order be entered upholding the October 9, 2012 denial of a Minor Work Permit for the construction of a boatlift and pilings on Sovereignty Lands located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "the Property"). The proposed construction lies within the adjacent neighbor's 25 foot setback from the riparian line and 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 (hereinafter "SLM 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.

In the Appellant's Exceptions to the Recommended Order dated March 7, 2013 there are several mischaracterizations of the facts and certain facts left out of the argument that would be relevant if the facts alleged by the Appellant are accepted. These alleged facts regarding e-mail correspondences, however, are not relevant to the decision at hand. The sole question is whether a structure that has been removed, as identified in paragraphs 10 and 12 of the Stipulated Facts, attached hereto as Exhibit 1, is considered *grandfathered* under the rules. This case does not involve an estoppel argument and any allegations regarding what the Appellant may have thought or heard from EPC staff is irrelevant to the entry of this Recommended Order and Final Order.

Response to 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 SLM 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 Hearing Officer correctly made the appropriate Conclusions of Law in this case. The Hearing Officer’s Conclusions of Law in paragraph #5 and #7 of the Hearing Officer’s Recommended Order are supported by the Tampa Port Authority’s governing rules and Legislative Act and should be upheld by the Commission. The Hearing Officer’s ultimate conclusion that the proposed boatlift and its location cannot be considered grandfathered under Subsection II.I.3, SLM Rules, because the boatlift is not presently there and has been removed from the area for over two years prior to the application being submitted, is supported by Florida law.

The question presented in the Appellant’s Exceptions and addressed in this response is whether the structure must presently be in existence for it to be eligible for grandfathering under the setback rules. In this particular case, the Appellant concedes that the proposed structure does not meet the current TPA SLM Rule Subsection V.A.3.a.(2)(c). This rule requires that structures located on Sovereignty Lands adjacent to properties with a shoreline frontage of greater than 80 feet must maintain a minimum structural setback distance of 25 feet from the neighboring riparian lines. Exceptions to the setback requirements set forth above may be granted if the affected adjacent property owner provides an “affidavit of no objection” (AONO) or if the proposed structure is a subaqueous utility line. The boatlift structure does not meet this rule as it is proposed to be located within the neighbor’s setback and the neighbor is objecting to its placement there.

The Appellant alleges in the Exceptions that the plain meaning of the grandfather clause should be considered when interpreting the language. It is important to closely read the language in

the rule relied upon by the Appellant. Subsection II.I.3, SLM Rules, states “[w]ater dependant structures which *are* non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules.” (emphasis added)

By using the word “*are*”, the rule is written clearly to be present tense in nature rather than past tense. The plain meaning of the grandfather clause requires that the structure must presently exist at the time the application is submitted. Further, Black’s Law Dictionary, Sixth Edition, defines “grandfather clause” as a “[p]rovision in a new law or regulation exempting those *already in* or a part of the *existing system* which is being regulated.” (emphasis added). Again, the plain meaning of grandfathering language requires the structure to exist at the time of the application submittal. The Hearing Officer correctly identified that for a particular structure to be grandfathered it must be presently in existence rather than having existed two years ago.

The Appellant takes exception to Conclusion of Law paragraph #4. This Conclusion of Law is simply the verbatim language taken directly from Subsection V.A.3.a.(2)(c), SLM Rules. This Conclusion of Law may not be overturned in the Final Order.

The Appellant takes exception to paragraphs #5 and #7 as the Appellant alleges those conclusions add language or words that are not presently in the grandfather clause. The Appellant is incorrect, however, as the language in the rule is written in the present tense wherein the drafters of the language inserted the phrase “[w]ater dependant structures which *are* non-revenue generating structures constructed . . .” (emphasis added). The language in the Appellant’s Exceptions clearly shows the mischaracterization and misinterpretation of the language in the rule. On page 5, eleven lines down from the top, the Appellant states “[i]n the present case, it is undisputed that Mr. Baldor’s boatlift *is* a water dependant structure as defined in the SLM Rules . . .” (emphasis added) The

correct language in that sentence should have been “[i]n the present case, it is undisputed that Mr. Baldor’s boatlift *was* a water dependant structure as defined in the SLM Rules” (emphasis added) because the boatlift does not presently exist and has not existed for over two years. The plain meaning of the rule has been met by the clear use of the word “are.” There is nothing ambiguous about the present tense of the verb “are” in the rule language.

The Appellant also mischaracterizes the “no permit required” language regarding being allowed to remove two pilings without a permit as reflected in the e-mail dated April 26, 2012. It is true that a permit is not required under the TPA SLM rules to replace two pilings on an existing boatlift. This case is not about replacing two pilings on an existing boatlift but is about whether the boatlift must presently exist for it to be grandfathered. Two pilings left in the water does not constitute a boatlift and does not authorize replacement of the entire structure without a permit or, if an application is submitted, without an “affidavit of no objection” from the neighbor. The Appellant’s statement in the exceptions “[t]he EPC further stated that if ‘50% of boatlift pilings (usually 2)’ exist then a Minor Work Permit is not required” is incorrect. This language contradicts the language in the e-mail and totally mischaracterizes the actual language regarding when a permit is required. The April 26, 2012 e-mail states “[t]he structure *has to be existing at the time of the application request.*” (emphasis added) and the language “50% of boatlift pilings (usually 2)” means that 50% of the boatlift pilings may be replaced without a permit on an **existing** boatlift. The Appellant acknowledges the boatlift was removed over two years prior to submittal of the application. The stipulated fact that the boatlift was removed two years ago clearly conflicts with the “no permit required” language in the e-mail dated April 26, 2012. A copy of the e-mail is attached hereto as Exhibit 2. This argument is irrelevant to the decision about the grandfathering of a boatlift

but rather is related solely to minor repairs that do not need a permit.

Legal Argument in Support

Again, this case is about whether the structure must presently exist at the time of the submittal of the application for it to qualify as a grandfathered structure. The Appellant alleges that the structure and the proposed location are grandfathered, and that it is merely a replacement of the pre-existing boatlift. Although presumably the Neighboring Property Owner previously accepted the location of the boatlift in 1994, the Neighboring Property Owner, Mr. Byrum, is now objecting to the replacement of the structure in its proposed location. This case and decision are important as the Conclusions of Law in the Final Order will become precedent for future structures in Hillsborough County. The decision to allow structures to be rebuilt in areas, where they are otherwise prohibited, based on grandfathering of structures that no longer exist (and may have been removed as long as 29 years ago), would create significant problems for the agency and the TPA in implementing the SLM Rules. The training received from the TPA and guidance in the past has been that for structures to be eligible for grandfathering under Rule Subsection II.L.3, SLM Rules, the structures must be in existence at the time of the first inspection after the submittal of a TPA Minor Work Permit application. In addition, pursuant to TPA policy an expiration date is included in each Minor Work Permit issued. Each Minor Work Permit expires one year after issuance, which deadline can be extended up to, but no more than, two additional years upon written request submitted prior to the original expiration date. That is important as the original 1994 Minor Work Permit, issued almost 20 years ago, has expired and the applicant cannot rely on that permit for grandfathering.

It is also important to note, in extraordinary circumstances such as an emergency or major storm damage, the previously permitted structures can be rebuilt, with written approval from the

TPA or EPC, so long as the reconstruction occurs within a reasonable period of time. In this case the Appellant concedes the structure was voluntarily removed and the removal was not necessitated upon any specific major storm damage or emergency. No emergency caused the involuntary removal of the structure and even if an emergency had occurred, the period of time that transpired before a new application was submitted was not within reason to maintain the grandfathering status of the structure.

“Being an exception to a general prohibition, any such statutory provision is normally construed strictly against the one who attempts to take advantage of the exception.” State v. Nourse, 340 So. 2d 966, 969 (Fla. 3d DCA 1976). “And, unless the right to the exception is clearly apparent in the statute, no benefits thereunder will be permitted.” Id. “Any ambiguity in an exception statute is normally construed in a manner that restricts the use of the exception.” Id. The grandfathering language in Subsection II.I.3, SLM Rules is an exception to the general prohibition of installing structures within the 25 foot riparian line setback. Without conceding there is any ambiguity in the grandfathering language of the rule, the Appellant should not be entitled to the exception as the grandfathering language is to be strictly construed against the Appellant.

The interpretation that the boatlift must be in existence at the time of application submittal is supported by Florida case law. In the case of Cowart v. Kalif, 123 So. 2d 468, 470 (Fla. 3d DCA 1960), the Court discussed the grandfathering provision in a statute regarding certificates of competency. The statute provided that for a plumber to be eligible for a County Certificate of Competency, without first passing a written examination, the applicant must have “actively, continuously and properly engaged in the trade concerned...for a period of five years immediately prior to the effective date” of the statute, and then the applicant must apply within six months of the

effective date of the statute. Id. Where one of the applicants “did not apply until after the time limit in the ‘grandfather clause’ had expired,” the court emphasized that this time period was not contested as “unreasonable.” Id. The basis for the court’s emphasis was a reasonable “time limitation... is an integral part of the operation of the provision and may not be disregarded or waived by the administrative authority. To grant such exceptions would be to extend the right indefinitely at the unlimited discretion of the administrator of the law. Since the provision containing the time limit did not work an undue hardship, it will be upheld. This limitation must be observed.” Id. at 470-471. Conversely, a ruling upholding the Appellant’s argument would give the Executive Director unlimited discretion to accept structures as grandfathered that were permitted and removed over 25 years ago.

The Third DCA’s interpretation of the language “actively” and “continuously” for maintaining employment would similarly apply to interpreting the word “are” for existing structures, rather than also encompassing those that *were*. Cowart at 470. Any interpretation accepting anything less than an “existing structure,” such as a boatlift that had not existed for over two years previously, would extend the right indefinitely at the unlimited discretion of the administrator of the law. This interpretation raised by the Appellant is not supported by Florida law.

Another Florida case further supports that the voluntary removal of the boatlift two years before the application to re-install the boatlift removes any grandfathering available for the applicant. In the case Chancellor Media Whiteco Outdoor Corp. v. State, Dept. of Transp., 796 So.2d 547, 548 (Fla. 1st DCA 2001), the Court held that the grandfathering of a state highway sign is lost once the sign is “destroyed by noncriminal, nontortious acts.” The court’s decision was based on a federal statute that stated that highway “signs which do not conform to size, lighting, and spacing

requirements are generally prohibited and must be removed. However, in accordance with a federal regulation, a state administrative rule, and the grandfather clause of the federal-state agreement, an exception has been carved out for nonconforming signs which pre-existed the federal-state agreement. So long as a grandfathered sign remains in substantially the same condition as it existed when it became nonconforming, the prohibition will not apply. And the federal regulation further provides in relevant part as follows: the [grandfathered] sign may continue as long as it is not destroyed.... (and) if permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.” *Id.* Therefore, “grandfathered” signs lose their exemption once they are “destroyed by noncriminal, nontortious acts...” *Id.* at 549. Therefore, the Court found that signs destroyed by inclement weather were not even protected under this statute, since this did not meet the grandfather exception language. *Id.* This court’s decision illustrates that a statute’s language is to be strictly interpreted, even if another interpretation may otherwise seem permissible.

Grandfather clauses are where “non-conforming uses are...permitted by zoning ordinances to continue even though similar uses are not permitted in area in which they are located.” *Dowd v. Monroe County*, 557 So.2d 63, 65 (Fla. 3d DCA 1990). For instance, “under the [Sarasota] County’s zoning ordinance, nonconforming uses that continue to operate after the effective date of the regulation are subject to the following discontinuance provision: Discontinuance - If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 365 consecutive days, any subsequent use of such land shall conform to the regulations specified by these zoning regulations for the district in which such land is located. A policy rationale for this regulation is that “nonconforming uses may be gradually


eliminated over the course of time. Other methods include attrition, destruction, and obsolescence.” Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431, 432 (Fla. 2d DCA 2007). While there was a suspension of a motel's operation for sixteen months (over the 365 days) this did not constitute a discontinuance of the nonconforming use because ongoing necessary repairs and renovations were occurring during this time.” Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431, 433 (Fla. 2d DCA 2007). The instant case can be distinguished because there is no record of repairs, and under no circumstances would a boatlift's repairs require such a substantial duration of time.

Finally, 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.” Although there are no relevant facts in dispute, the evidence in the case demonstrates that the Appellant has not established that he can obtain a grandfathering exemption for a boatlift that was removed over two years prior to submittal of an application to rebuild the structure. The language in the applicable rules clearly identifies the present tense for structures, meaning the structures must be presently existing to be grandfathered. A conclusion of law that finds that structures removed over two years previous to the submittal of an application would be considered grandfathered is not consistent with the SLM Rules and would cause significant future problems for the agency in implementing the rules.

The Appellee is also attaching to this Response to the Appellant's Exceptions to the Recommended Order its Motion for Summary Recommended Order which is attached hereto as Exhibit 3 in further support of this argument. The Appellant also has submitted its Motion that was initially filed with the Hearing Officer in support of the Exceptions to the Recommended Order.

WHEREFORE, the Appellee Executive Director of the EPC requests the Commission enter a Final Order, adopting the Hearing Officer's Recommended Order with the stipulated finding of facts and conclusions of law.

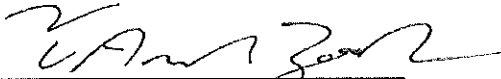
Respectfully submitted this 8th day of March 2013.



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

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was sent to via e-mail to **Anthony J. Cuva, Esq.** at Anthony.Cuva@bajocuva.com on this 8th day of March 2013.



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

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

JAVIER BALDOR,

Appellant,

EPC Case No: 12-EPC-015

vs.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,**

Appellee.

STIPULATED FACTS

The parties stipulate to the following facts without waiving objections as to their relevance:

1. The Appellee Environmental Protection Commission of Hillsborough County (hereinafter "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"). The EPC also has authority to implement the Tampa Port Authority (hereinafter "TPA") Submerged Lands Management Rules (hereinafter "SLM Rules") and issue Minor Work permits on behalf of the TPA 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."

2. Appellant Javier Baldor owns property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "Property").

3. Mr. Baldor purchased the Property in October 2005.

4. The Property is located on a canal identified as "Sovereignty Lands" owned by the Tampa Port Authority (hereinafter "TPA") and under its marine construction regulatory authority.

5. The Appellant has standing in this proceeding.

6. A dock currently exists at the Property.

7. The dock was originally permitted by the TPA in 1987 under a Minor Work permit. The 1987 TPA permit, identified as #87-161, was issued on June 4, 1987 and authorized the original construction of the dock.

8. On March 1, 1994, a revision to the 1987 permit was issued, identified as permit #94-043 which authorized the addition of a boatlift to the existing structure. The dock and boatlift that existed on Mr. Baldor's property were constructed pursuant to valid permits from the Authority.

9. Since 1992, the parcel of property to the east of the Property (and closest to the boatlift) has been owned Mr. Paul Byrum. At the time the boatlift was constructed in 1994, Mr. Byrum owned the adjacent property and presumably did not object to the construction of the boatlift.

10. The boatlift was constructed and existed on the Property until it was removed in mid-December 2009 or early January 2010

11. Mr. Baldor removed the boatlift because it was dilapidated and intended to replace it.

12. The boatlift was not removed because of any particular emergency or storm event.

13. The total length of the Appellant's shoreline is 122.5 feet.

14. On January 16, 2012, Mr. Baldor's marine contractor and agent contacted the EPC to determine whether the "boatlift could be replaced within the same footprint as the original." Mr. Baldor's marine contractor advised the EPC in writing that the boatlift had been removed: "(a picture of the existing boatlift, which has since been removed, is attached). The new boatlift will be installed within the same footprint as the original."

15. On March 16, 2012, the EPC advised Mr. Baldor in writing that:

We consulted with the Port on this matter and we all agree that as long as the dock was previously permitted, it can be replaced in-kind without the Affidavit of No Objection sign-off. We will simply notice the neighbors with the standard adjacent property owner (APO) letter, which will allow them to comment but does not give them the power to stop the project as the AONO sign off does.

16. The EPC staff relied on the statement by the contractor regarding the *replacement* of the boatlift when the EPC staff identified the boatlift could be *replaced in-kind*. No EPC site visit had been done to verify whether or not the structure was in existence at that time

17. On March 20, 2012, Mr. Baldor submitted an application to the EPC for a Minor Work permit to "replace boatlift pilings and lift."

18. The proposed boatlift would be constructed in the exact location as the original permitted structure was located. The proposed boatlift would be located within approximately eight (8) feet of the neighboring property to the east's (hereinafter referred to as "Neighboring Property") riparian line.

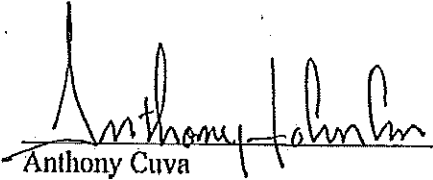
19. The riparian line at the shoreline between the Appellant's Property and the Neighboring Property extends straight out from the true property line and runs approximately 90 degrees off the shoreline heading due north at 0 degrees.

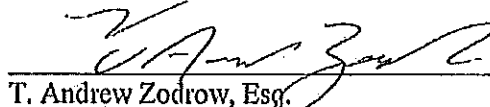
20. The adjacent property owner, Mr. Byrum, objected to the application and has not submitted an affidavit of no objection.

21. The parties agree that the issue in this appeal is the interpretation of the Submerged Lands Management Rules (SLM Rules), in particular, the Grandfathered Structures provision:

Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

Respectfully submitted this 16th day of February 2013.


Anthony Cuva
Bajo Cuva Cohen Turkel, P.A.
100 N. Tampa St., Suite 1900
Tampa, FL 33602
E-mail: Anthony.Cuva@bajocuva.com


T. Andrew Zodrow, Esq.
Environmental Protection Commission
of Hillsborough County
3629 Queen Palm Drive
Tampa, FL 33619
E-mail: zodrow@epchc.org

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

From: Holland, Kelly <HollandK@epchc.org>

To: Adams Desigh <jbadams@gatordredging.com>; Anchor Marine and Boatlift <jgres@tampabay.rr.com>; Apollo Marine Construction <jj@apollodocks.com>; Bay Dock Enterprise <robinc@baydock.com>; Docks By Mike <newellruskin@gmail.com>; Gibson Marine Construction <mike@gibson-marine.com>; Hecker Construction Company <heckercompany@aol.com>; Lambert Marine <b.lambertmarine1@yahoo.com>; Land and Sea Masters <perry@645dock.com>; Priority Marine <jason@prioritymarine.com>; Spectrum Marine <calescibetta@verizon.net>; Stellar Marine Service <stellarservices@yahoo.com>; Tampa Bay Marine <tbm@tampabaymarineinc.com>; Tampa Dock & Seawall <cjuneau@jwrcontracting.com>; Waterfront Engineering <myseawall@aol.com>; Waterline Construction <daisy@1waterline.com>

Cc: Owens, Pete <OwensP@epchc.org>

Sent: Thu, Apr 26, 2012 2:19 pm

I have previously been asked to put these in writing, so I thought for consistency I would pass them on to you.

The following is predicated on the proposed activity having been previously permitted. If the dock or rip-rap was not previously permitted, a permit is now required to legitimize the activity. The structure has to be existing at the time of the application request.

1. Re-decking a dock, anything from the stringers up.
2. 50% of boatlift pilings (usually 2)
3. 25% of the dock pilings
4. Renourishment of existing rip-rap. A photo of the rip-rap is required to document presence / absence of mangroves
5. In-Kind replacement of a dock destroyed or damaged during the current storm season due to a major storm
6. Removal only of an existing structure
7. In-Kind replacement of boatlift hardware, no enlargement of lift area allowed.

If you have any questions, please do not hesitate to contact me.

Thanx,

Kelly M. Holland

Wetlands Management Division

Environmental Protection Commission

of Hillsborough County

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

3629 Queen Palm Drive

Tampa, FL 33619

Ph. (813) 627-2600 ext. 1222

FAX (813) 627-2630

Treat the earth well. It was not given to you by your parents, It was loaned to you by your children.

Native American Proverb

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

JAVIER BALDOR,

Appellant,

EPC Case No: 12-EPC-015

vs.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,**

Appellee.

MOTION FOR SUMMARY RECOMMENDED ORDER

Appellee ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPC), by and through its undersigned counsel, pursuant to Rule 1-2.32(i), Rules of the EPC, moves the assigned Hearing Officer to enter a Summary Recommended Order on the grounds that there are no genuine issues as to any material fact and the EPC Executive Director is entitled to a Recommended Order based on adopted rules of the Tampa Port Authority. In support thereof the Appellee states the following:

PRELIMINARY STATEMENT

On March 20, 2012, the Appellant submitted to the EPC Executive Director, 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"), an application for a Minor Work Permit for the construction of boatlift pilings and a boatlift on jurisdictional surface waters (hereinafter

“Sovereignty Lands”) adjacent to the Appellant’s property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter “Property”).

Based on the structure encroaching an undisputed seventeen (17) feet into the neighbor’s setback and the Appellant’s failure to obtain an “affidavit of no objection” from the neighbor, the application was denied. The Appellant then filed this appeal challenging the denial of the application. This proceeding is designed to formulate final agency action on the Appellant’s application for marine construction activities in Sovereignty Lands under the Tampa Port Authority Submerged Lands Management Rules (hereinafter “SLM Rules”) and the EPC Wetland Rule Chapter 1-11 and the Basis of Review adopted thereunder. No controversy exists in this matter under the EPC’s Wetland Rule Chapter 1-11 and the Basis of Review. The applicable regulations in controversy include only the Tampa Port Authority Enabling Act and the adopted Submerged Lands Management (SLM) Rules, specifically the *grandfathering* language in the SLM Rules.

STATEMENT OF CONTROVERSY

The issue to be determined in this appeal is whether the Appellant has demonstrated reasonable assurance that the proposed boatlift structure complies with the SLM Rules. More specifically, does the proposed boatlift structure comply with Rule Subsection II.I.3, SLM Rules, wherein “[w]ater dependant structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules.” The ultimate question is whether a structure that has been removed for over two years can still be considered grandfathered under the rules so as to allow it to be rebuilt in the same location where it otherwise would not be allowed under the applicable rules.

**STIPULATED FACTS: Those facts that are admitted
and that require no proof for consideration of this Motion**

The parties have stipulated to a list of facts for purposes of this Motion. The list of stipulated facts will be separately filed but those that are relevant will also be provided here below. The parties stipulate to the following facts without waiving objections as to their relevance:

1. The Appellee Environmental Protection Commission of Hillsborough County (hereinafter "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"). The EPC also has authority to implement the Tampa Port Authority (hereinafter "TPA") Submerged Lands Management Rules (hereinafter "SLM Rules") and issue Minor Work permits on behalf of the TPA 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."

2. Appellant Javier Baldor owns property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "Property").

3. Mr. Baldor purchased the Property in October 2005.

4. The Property is located on a canal identified as "Sovereignty Lands" owned by the Tampa Port Authority (hereinafter "TPA") and under its marine construction regulatory authority.

5. The Appellant has standing in this proceeding.

6. A dock currently exists at the Property.

7. The dock was originally permitted by the TPA in 1987 under a Minor Work permit. The 1987 TPA permit, identified as #87-161, was issued on June 4, 1987 and authorized the original construction of the dock.

8. On March 1, 1994, a revision to the 1987 permit was issued, identified as permit #94-043 which authorized the addition of a boatlift to the existing structure. The dock and boatlift that existed on Mr. Baldor's property were constructed pursuant to valid permits from the Authority.

9. The boatlift was constructed and existed on the Property until it was removed in mid-December 2009 or early January 2010.

10. The boatlift was not removed because of any particular emergency or storm event.

11. The total length of the Appellant's shoreline is 122.5 feet.

12. On March 20, 2012, Mr. Baldor submitted an application to the EPC for a Minor Work permit to "replace boatlift pilings and lift."

13. The proposed boatlift would be constructed in the exact location as the original permitted structure was located. The proposed boatlift would be located within approximately eight (8) feet of the neighboring property to the east's (hereinafter referred to as "Neighboring Property") riparian line.

14. The riparian line at the shoreline between the Appellant's Property and the Neighboring Property extends straight out from the true property line and runs approximately 90 degrees off the shoreline heading due north at 0 degrees.

15. The adjacent property owner, Mr. Byrum, objected to the application and has not submitted an affidavit of no objection.

16. The parties agree that the issue in this appeal is the interpretation of the Submerged Lands Management Rules (SLM Rules), in particular, the Grandfathered Structures provision:

Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

FACTS NOT RELEVANT BUT RAISED BY THE APPELLANT

17. On January 16, 2012, Mr. Baldor's marine contractor and agent contacted the EPC to determine whether the "boatlift could be replaced within the same footprint as the original." Mr. Baldor's marine contractor advised the EPC in writing that the boatlift had been removed: "(a picture of the existing boatlift, which has since been removed, is attached). The new boatlift will be installed within the same footprint as the original."

18. On March 16, 2012, the EPC advised Mr. Baldor in writing that:

We consulted with the Port on this matter and we all agree that as long as the dock was previously permitted, it can be replaced in-kind without the Affidavit of No Objection sign-off. We will simply notice the neighbors with the standard adjacent property owner (APO) letter, which will allow them to comment but does not give them the power to stop the project as the AONO sign off does.

19. The EPC staff relied on the statement by the contractor regarding the *replacement* of the boatlift when the EPC staff identified the boatlift could be *replaced in-kind*. No EPC site visit had been done to verify whether or not the structure was in existence at that time.

FACTS NOT STIPULATED TO BUT ALSO NOT DISPUTED BY APPELLANT

20. Although not relevant to the argument raised in this Motion for Summary Recommended Order,¹ the EPC staff did not recall the January 16, 2012 statement, referenced in paragraph 14 above, about the subject boatlift being previously removed on this particular project when the EPC staff person contacted the consultant on March 16, 2012. On January 16, 2012, the EPC staff person merely advised the contractor that Mr. Baldor could replace the subject boatlift on the property but he would be required to submit a permit application. Later on March 16, 2012, when the EPC staff person responded to the request to replace the boatlift “in-kind,” the EPC staff person relied on the representation by the contractor that the boatlift was being replaced in-kind rather than being re-installed after two years of absence. The EPC staff person did not recall the previous contact on this property.

LEGAL ARGUMENT IN SUPPORT

The question presented in this Motion is whether the EPC Executive Director is entitled to a Recommended Order denying the subject application as a matter of law based on the stipulated facts identified above. The issue in this case is whether the Appellant has demonstrated reasonable assurance that the proposed boatlift structure complies with the TPA Enabling Act and the SLM Rules. The Appellant concedes that the proposed structure does not meet the current TPA SLM Rule Subsection V.A.3.a.(2)(c). This rule requires that structures located on Sovereignty Lands adjacent to properties with a shoreline frontage of greater than 80 feet must maintain a minimum structural setback distance of 25 feet from the neighboring

¹ The Appellant has not raised an estoppel argument in the appeal. In addition, the Appellant is not eligible to make an estoppel argument under the undisputed facts of the case. Finally, there is

riparian lines. Exceptions to the setback requirements set forth above may be granted if the affected adjacent property owner provides an "affidavit of no objection" (AONO) or if the proposed structure is a subaqueous utility line. The boatlift structure does not meet this rule as it is proposed to be located within the neighbor's setback and the neighbor is objecting to its placement there.

The Appellant alleges in the Notice of Appeal that the structure and the proposed location are grandfathered, and that it is merely a replacement of the pre-existing boatlift. Although presumably the Neighboring Property Owner previously accepted the location of the boatlift in 1994, the Neighboring Property Owner, Mr. Byrum, is now objecting to the replacement of the structure in its proposed location. This case and decision are important as the Conclusions of Law in the Final Order will become precedent for future structures in Hillsborough County. The decision to allow structures to be rebuilt in areas, where they are otherwise prohibited, based on grandfathering of structures that no longer exist, would create significant problems for the agency and the TPA in implementing the SLM Rules. The training received from the TPA and guidance in the past has been that for structures to be eligible for grandfathering under Rule Subsection II.I.3, SLM Rules, the structures must be in existence at the time of the first inspection after the submittal of a TPA Minor Work Permit application. In addition, pursuant to TPA policy an expiration date is included in each Minor Work Permit issued. Each Minor Work Permit expires one year after issuance, which deadline can be extended up to, but no more than, two additional years upon written request prior to the original expiration date. That is important as the original

no detrimental reliance demonstrated by the Appellant which would be necessary to make an estoppel argument.

1994 Minor Work Permit, issued almost 20 years ago, is expired and the applicant cannot rely on that permit.

It is also important to note, in extraordinary circumstances such as an emergency or major storm damage, the previously permitted structures can be rebuilt, with written approval from the TPA or EPC, within a reasonable period of time. In this case the Appellant concedes the structure was voluntarily removed and the removal was not necessitated upon any specific major storm damage or emergency. No emergency caused the voluntary removal of the structure and even if an emergency had occurred, the period of time that transpired before a new application was submitted was not within reason to maintain the grandfathering status of the structure.

It is also important to closely read the language in the rule relied upon by the Appellant. Subsection II.I.3, SLM Rules, states “[w]ater dependant structures which *are* non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules.” (emphasis added) By using the word “*are*”, the rule is written clearly to be present tense in nature rather than past tense. This clearly means the structure must presently exist at the time the application is submitted. As stated above, an interpretation of the word to include previously existing structures would be inconsistent with the SLM Rules and would create significant problems for property owners in Hillsborough County in the future.

“Being an exception to a general prohibition, any such statutory provision is normally construed strictly against the one who attempts to take advantage of the exception.” State v. Nourse, 340 So. 2d 966, 969 (Fla. 3d DCA 1976). “And, unless the right to the exception is clearly apparent in the statute, no benefits thereunder will be permitted.” Id. “Any ambiguity in an exception statute is normally construed in a manner that restricts the use of the exception.” Id.

The grandfathering language in Subsection II.L.3, SLM Rules is an exception to the general prohibition of installing structures within the neighbor's setback. Without conceding there is any ambiguity in the grandfathering language of the rule, the Appellant should not be entitled to the exception as the grandfathering language is to be strictly construed against the Appellant.

The interpretation that the boatlift must be in existence at the time of application submittal is supported by Florida case law. In the case of Cowart v. Kalif, 123 So. 2d 468, 470 (Fla. 3d DCA 1960), the Court discussed the grandfathering provision in a statute regarding certificates of competency. The statute provided that for a plumber to be eligible for a County Certificate of Competency, without first passing a written examination, the applicant must have "actively, continuously and properly engaged in the trade concerned...for a period of five years immediately prior to the effective date" of the statute, and then the applicant must apply within six months of the effective date of the statute. Id. Where one of the applicants "did not apply until after the time limit in the 'grandfather clause' had expired," the court emphasized that this time period was not contested as "unreasonable." Id. The basis for the court's emphasis was a reasonable "time limitation...is an integral part of the operation of the provision and may not be disregarded or waived by the administrative authority. To grant such exceptions would be to extend the right indefinitely at the unlimited discretion of the administrator of the law. Since the provision containing the time limit did not work an undue hardship, it will be upheld. This limitation must be observed." Id. at 470-471. A ruling upholding the Appellant's argument would give the Executive Director unlimited discretion to accept structures as grandfathered that were permitted and removed over 25 years ago.

The Third DCA's interpretation of the language "actively" and "continuously" for maintaining employment would similarly apply to interpreting the word "are" for existing

structures, rather than also encompassing those that *were*. Cowart at 470. Any interpretation accepting anything less than an “existing structure,” such as a boatlift that had not existed for over two years previously, would extend the right indefinitely at the unlimited discretion of the administrator of the law. This interpretation raised by the Appellant is not supported by Florida law.

Another Florida case further supports that the voluntary removal of the boatlift two years before the application to re-install the boatlift removes any grandfathering available for the applicant. In the case Chancellor Media Whiteco Outdoor Corp. v. State, Dept. of Transp., 796 So.2d 547, 548 (Fla. 1st DCA 2001), the Court held that the grandfathering of a state highway sign is lost once the sign is “destroyed by noncriminal, nontortious acts.” The court's decision was based on a federal statute that stated that highway “signs which do not conform to size, lighting, and spacing requirements are generally prohibited and must be removed. However, in accordance with a federal regulation, a state administrative rule, and the grandfather clause of the federal-state agreement, an exception has been carved out for nonconforming signs which pre-existed the federal-state agreement. So long as a grandfathered sign remains in substantially the same condition as it existed when it became nonconforming, the prohibition will not apply. And the federal regulation further provides in relevant part as follows: the [grandfathered] sign may continue as long as it is not destroyed.... (and) if permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.” Id. Therefore, “grandfathered” signs lose their exemption once they are “destroyed by noncriminal, nontortious acts...” Id. at 549. Therefore, the Court found that signs destroyed by inclement weather were not even protected under this statute, since this did not meet the

grandfather exception language. Id. This court's decision illustrates that a statute's language is to be strictly interpreted, even if another interpretation may otherwise seem permissible.

Grandfather clauses are where "non-conforming uses are...permitted by zoning ordinances to continue even though similar uses are not permitted in area in which they are located." Dowd v. Monroe County, 557 So.2d 63, 65 (Fla. 3d DCA 1990). For instance, "under the [Sarasota] County's zoning ordinance, nonconforming uses that continue to operate after the effective date of the regulation are subject to the following discontinuance provision: Discontinuance - If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 365 consecutive days, any subsequent use of such land shall conform to the regulations specified by these zoning regulations for the district in which such land is located. A policy rationale for this regulation is that "nonconforming uses may be gradually eliminated over the course of time. Other methods include attrition, destruction, and obsolescence." Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431, 432 (Fla. 2d DCA 2007). While there was a suspension of a motel's operation for sixteen months (over the 365 days) this did not constitute a discontinuance of the nonconforming use because ongoing necessary repairs and renovations were occurring during this time." Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431, 433 (Fla. 2d DCA 2007). The instant case can be distinguished because there is no record of repairs, and under no circumstances would a boatlift's repairs require such a substantial duration.

Finally, 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." Although there are no relevant facts in dispute, the evidence in the case demonstrates

that the Appellant has not established that he can obtain a grandfathering exemption for a boatlift that was removed over two years prior to submittal of an application to rebuild the structure. The language in the applicable rules clearly identifies the present tense for structures, meaning the structures must be presently existing to be grandfathered. A conclusion of law that finds that structures removed over two years previous to the submittal of an application would be considered grandfathered is not consistent with the SLM Rules and would cause significant future problems for the agency in implementing the rules.

WHEREFORE, the Appellee Executive Director of the EPC requests the Hearing Officer enter a Recommended Order, adopting the stipulated finding of facts and making conclusions of law, and upholding the denial of the application to construct the boatlift in its proposed location.

Respectfully submitted this 17th day of February 2013.

/S/

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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was sent to Anthony J. Cuva, Esq. at Bajo Cuva Cohen and Turkel, 100 North Tampa St., Suite 1900, Tampa, FL 33602 via electronic mail; Anthony.Cuva@bajocuva.com on this 17th day of February 2013.

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: RESTORE Act: Southwest Florida Regional Ecosystem Restoration Plan

Consent Agenda **Regular Agenda** **Public Hearing**

Division: Water Management Division

Recommendation: None, Informational Presentation

Brief Summary: The newly established Gulf Coast Restoration Trust Fund is anticipated to provide funds to the five Gulf Coast States to restore and offset the environmental and economic impacts associated with the Deep Water Horizon oil spill. As approved by the Joint Policy Board, the three NEP Directors will be submitting the finalized Regional Plan to the Gulf Restoration Council, the State of Florida, and the National Fish and Wildlife Foundation for funding consideration. EPC staff has submitted, through the National Estuary Programs, five projects for funding consideration under the RESTORE Act.

Financial Impact: Funding to be determined based on project approval and final settlement through the Clean Water Act (CWA) and Natural Resources Damage Assessment (NRDA) process.

Background:

The newly established Gulf Coast Restoration Trust Fund is anticipated to provide funds to the five Gulf Coast States to restore and offset the environmental and economic impacts associated with the Deep Water Horizon oil spill. As a partner in the Southwest Florida NEPs, we have been asked to provide our input into a Southwest Florida Regional Ecosystem Restoration Plan, specifically to develop a prioritized list of environmental projects which would restore and protect the natural resources, ecosystems, water quality and coastal wetlands of Southwest Florida, and which are consistent with the actions in the NEPs' CCMPs. As approved by the Joint Policy Board, the three NEP Directors will be submitting the finalized Regional Plan to the Gulf Restoration Council, the State of Florida, and the National Fish and Wildlife Foundation for consideration in the development of each of their funding priorities under the RESTORE Act.

List of Attachments: No Attachments

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: Computer and Server Virtualization Project

Agenda Section: Regular Agenda

Division: Legal and Administrative Services Division

Recommendation: Informational Report Only.

Brief Summary: EPC MIS staff is implementing a virtual computer and server system over the next three years. Computer virtualization involves the creation of many virtual machines within one physical machine. Thus employees would not have physical desktop computers in their offices, but only monitors and a keyboard that connect to one larger server. Additionally the EPC will need fewer servers. Thus, the benefits include centralized management of the server(s), centralized security management, less power consumption; and capital savings.

Financial Impact: To be discussed.

Background: EPC's Management Information Systems (MIS) staff has been analyzing the benefits of converting its computer system and its server system to a virtualized system. Computer virtualization involves the creation of many virtual machines within one physical machine. Thus employees would not have physical desktop computers in their offices, but only monitors and a keyboard that connect to one larger server. This will reduce the need to maintain, repair, and replace over 130 computers and related software for each computer.

Additionally, the EPC can "virtualize" its servers, thus allowing for a reduction in servers. Currently the EPC builds a different server for each necessary application. For example, there is an Exchange server for email, a SQL server for databases, and a Web server to host Internet web pages. With server virtualization, staff can build these same servers on one physical server. If the agency has a server requirement for a new application that is coming online, MIS staff can quickly create a new virtual server without making an additional hardware purchase.

Other benefits of both server and computer virtualization are as follows: 1) all of the configuration is managed from a central console where we remotely connect to any server or desktop; 2) security is centrally managed; 3) there is a much smaller environmental footprint resulting from less hardware consumables and less power consumption; and 4) capital savings over the three year phase-in period.

This project is to be phased in between 2013 to 2015.

List of Attachments: None

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: ALDP Project - Enforcement Assistance With Financial Hardship Requests

Agenda Section: Regular Agenda

Division: Air Management Division

Recommendation: Informational Report

Brief Summary: This item is the latest in a continuation of project presentations from staff who are participating in the Agency's Advanced Leadership Development Program. The presenter has developed a standardized evaluation methodology for those that claim financial hardship during the enforcement process.

Financial Impact: No Financial Impact

Background: A few times each year, parties involved an enforcement action claim they are unable to comply with the corrective actions or penalties. Until now, EPC staff had no formal way to evaluate these claims. The presenter has developed an Agency policy and methodology that utilizes EPA computer programs to assist in evaluating their financial condition and their ability to comply.

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: March 21, 2013

Subject: Authorization to Administer Standard Programmatic General Permitting -Pending Agreement with US Army Corps of Engineers

Consent Agenda _____ **Regular Agenda** X **Public Hearing** _____

Division: Wetlands

Recommendation: Informational Report

Brief Summary: Consolidation and streamlining of environmental permitting has been on the Board's and staffs' priority list for several years. EPC staff have been meeting with technical experts from the USACoE with respect to streamlining the dock and seawall permitting process. Right now, EPC has the responsibility to permit docks, seawalls, and related structures for the Tampa Port Authority and for the State DEP. The USACoE also has similar permitting responsibilities. Both EPC and the USACoE recognize the possible benefits to the public of additional consolidation and streamlining. Currently, the USACoE is drafting a proposed agreement that would empower EPC to act on behalf of the USACoE under certain circumstances and situations.

Staff anticipates that the agreement will be completed sometime in early April.

Financial Impact: The financial impact to citizens will be either neutral or a cost reduction. This will be an added workload to EPC without additional compensation (as the USACoE did not charge for its services). EPC will address this added workload with a re-structuring of staff responsibilities.

Background:

In 2009, EPC assumed responsibilities to regulate non-commercial docks, seawalls and related marine structures and activities from the Tampa Port Authority. In 2012, EPC received partial delegation from the Department of Environmental Protection to undertake Environmental Resource Permitting. Much of this delegation involves docks, seawalls and related marine structures and activities.

The other agency that regulates many of these same activities is the US Army Corps of Engineers. EPC and the USACoE are developing an agreement that will enable EPC to administer portions of the Corps' State Programmatic General Permits.

The goal of this effort is to continue to come closer to providing citizens a true “one stop” permitting” avenue for non-commercial docks, seawalls and other marine-related activities. What once took three agencies to permit will now require only one agency.

A secondary benefit to this consolidation is the future possible coalescing of the different sets of regulations into a more easily understood standardized set. There exist differences in the three sets of regulations. Having a single agency guiding the applicants through all three sets may result in having more consistency in future years.