

**EPC COMMISSIONERS**

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



Richard Garrity, Ph.D.  
*Executive Director*

Richard Tschantz, Esq.  
*General Counsel*

**EPC MEETING AGENDA**

*June 18, 2015*

*Meetings commence at 9:00 a.m.*

*601 East Kennedy Boulevard, Tampa, FL*

*County Center Board Room 2<sup>nd</sup> Floor*

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**APPROVAL OF CHANGES TO THE AGENDA**

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

**I. PUBLIC COMMENT**

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

**II. CITIZENS' ENVIRONMENTAL ADVISORY COMMITTEE**

Summary of recent CEAC meeting by CEAC Chair

**III. CONSENT AGENDA**

- A. Approval of Meeting Minutes:  
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- B. Monthly Activity Reports – May 2015.....15
- C. Pollution Recovery Fund Report – October 2014 thru May 2015 .....27
- D. Monthly Legal Case Summary – June 2015.....29

**IV. PRESENTATION, CERTIFICATE OF APPRECIATION TO DEPUTY MARKUS BATES**

- V. **FINAL ORDER HEARING: Ogdan, et al. vs Truex and EPC** (Case No. 14-EPC-005,  
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**VI. WETLANDS MANAGEMENT DIVISION**

Progress Report: Status of MOUs/MOAs between EPC Wetlands Management Division  
and Hillsborough County's Economic Development Department.....99

**VII. WATER MANAGEMENT DIVISION**

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**VIII. AIR MANAGEMENT DIVISION**

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**IX. LEGAL AND ADMINISTRATIVE SERVICES DIVISION**

- A. Introduction of EPC's Community Relations Coordinator
- B. Employment Agreement for EPC Executive Director Services with Janet L. Dougherty ..107

**X. EXECUTIVE DIRECTOR REPORT**

GSA Pre-Application

**XI. FAREWELL RECEPTION FOR DR. RICHARD D. GARRITY, EXECUTIVE DIRECTOR**

Any person who might wish to appeal any decision made by the EPC 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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MARCH 3, 2015 - ENVIRONMENTAL PROTECTION COMMISSION EXECUTIVE DIRECTOR  
SCREENING COMMITTEE SUBCOMMITTEE - DRAFT MINUTES

The Environmental Protection Commission (EPC) Executive Director Screening Committee Subcommittee, Hillsborough County, Florida, met in Regular Meeting scheduled for Tuesday, March 3, 2015, at 1:30 p.m., in the Second Floor Conference Room, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Al Higginbotham and Commissioners Kevin Beckner and Lesley Miller.

I. Chairman Higginbotham Called the Meeting to Order.

▶ Attorney Rick Muratti, EPC Legal Department, replied to Chairman Higginbotham about noticing/statutory requirements. ▶ Chairman Higginbotham called the meeting to order at 1:30 p.m. and stated the meeting purpose.

II. Dr. Richard Garrity, EPC Executive Director, Summarized the EPC Commission Vote from February 19, 2015; the Proposed Committee Membership and Nominees; and Provided Updates Regarding Availability of Nominees.

▶ Dr. Garrity introduced EPC staff, reviewed prior EPC Board direction, and referred to background material. Mr. Jerry Campbell, Director, EPC Air Management Division, confirmed the applicants' biographies were accessible. ▶ Dr. Garrity verified Attorney Kimberly Madison, with Adams and Reese LLP, was unable to participate. Conversation ensued on the voting process and diversity concerns. ▶ Dr. Garrity noted Ms. Linda Washington, Progress Village CDC, could not attend daytime meetings.

III. Chairman Higginbotham and Commissioners Beckner and Miller Discussed the Screening Committee Membership, Nominees, and Vote for a Final Screening Committee Format for Consideration by the Full EPC Commission at the EPC Special Meeting on March 4, 2015.

▶ After talks about separate appointees, standalone committee membership, and the nominees to be eliminated, Attorney Muratti would provide updated information. ▶ Chairman Higginbotham entertained a motion to remove the names of Madison, Burke, Washington, and Siewert and send the remainder forward to the Board of County Commissioners tomorrow, ▶ **Commissioner Miller moved it, seconded by Commissioner Beckner, and carried three to zero.**

TUESDAY, MARCH 3, 2015 - DRAFT MINUTES

▶ There being no further business, the meeting was adjourned at 1:43 p.m.

READ AND APPROVED: \_\_\_\_\_

CHAIRMAN

ATTEST:

PAT FRANK, CLERK

By: \_\_\_\_\_

Deputy Clerk

ssg

DRAFT



MARCH 4, 2015 - ENVIRONMENTAL PROTECTION COMMISSION SPECIAL MEETING - DRAFT  
MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Special Meeting scheduled for Wednesday, March 4, 2015, at 11:30 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

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

The following member was absent: Commissioner Al Higginbotham.

I. EPC Chairman Miller Called the EPC Meeting to Order

▶ Chairman Miller called the meeting to order at 11:33 a.m.

II. Commissioner Higginbotham (Screening Committee Chairman) Gave a Summary of the Subcommittee Meeting of the EPC Screening Committee for the Executive Director's Recruitment which was held on March 3, 2015.

▶ Chairman Miller deferred to Dr. Richard Garrity, EPC Executive Director, who elaborated on the item. Chairman Miller verified the selection procedure.

III. Discussion and Vote by the EPC Regarding Appointment of the Remaining Members of the EPC Screening Committee for the Executive Director's Recruitment

Agricultural Community - Hugh Gramling.

Business Community - Joe Capitano.

Development Community - Judy James.

Environmental Community - Jan Smith.

Bay Management - Jan Platt.

Civic Association/Community Leaders - Thomas Scott.

▶ Ms. Joyce Myrick, EPC, conducted the selection process. ▶ **Commissioner Beckner moved to confirm, seconded by Commissioner Crist.** Responding to Commissioner Beckner, Chairman Miller clarified the motion included designees Mr. Mike Herr, city of Plant City; Ms. Aleicia Latimer, city of Temple Terrace; and the unnamed representatives from the city of Tampa Planning and

WEDNESDAY, MARCH 4, 2015 - DRAFT MINUTES

Development and Hillsborough County Development Services. ▶ **The motion carried six to zero.** (Commissioner Higginbotham was absent.)

▶ There being no further business, the meeting was adjourned at 11:41 a.m.

READ AND APPROVED: \_\_\_\_\_  
CHAIRMAN

ATTEST:  
PAT FRANK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

jh

DRAFT

MAY 6, 2015 - ENVIRONMENTAL PROTECTION COMMISSION SPECIAL MEETING - DRAFT  
MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Special Meeting scheduled for Wednesday, May 6, 2015, at 11:30 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Lesley Miller Jr. and Commissioners Kevin Beckner, Victor Crist, Ken Hagan, Al Higginbotham, Sandra Murman, and Stacy White.

I. INTRODUCTORY REMARKS

▶ Chairman Miller called the meeting to order at 11:47 a.m.

II. EPC EXECUTIVE DIRECTOR RECRUITMENT SCREENING COMMITTEE PROCESS AND RESULTS

▶ Commissioner Higginbotham thanked the committee members, touched on the selection process, and announced Dr. Scott Emery had withdrawn from consideration. ▶ Mr. Dane Petersen, Director, Civil Service Office, added comments.

III. DISCUSSION AND APPROVAL OF EXECUTIVE DIRECTOR CANDIDATES FOR FINAL INTERVIEWS ON MAY 21, 2015

▶ Identifying Attorney Richard Tschantz and Ms. Mary Yeargan as the remaining top candidates chosen by the selection committee, Chairman Miller sought action. Observing Mr. Robert Musser had initially tied with Dr. Emery in votes, ▶ **Commissioner Higginbotham moved to send Mr. Musser forward for the May 21, 2015, EPC meeting and include Mr. Musser in the final candidates, seconded by Commissioner Beckner.** Expressing apprehension with the term "final candidate" and favoring at least one additional candidate with private-sector experience, ▶ Commissioner Crist made an amendment to the motion the EPC Board add two private-sector candidates for consideration, seconded by Commissioner Murman. (The second was subsequently withdrawn.)

▶ Commissioner Hagan believed the top five candidates should be considered, leaving four candidates without Dr. Emery. Noting the candidate with private-sector experience had finished last in the voting, Commissioner Murman withdrew the second to the amendment. (The amendment died for lack of a second.) ▶ **Commissioner Hagan made an amendment the EPC Board go to the top**

five candidates; once the EPC Board removed Dr. Emery, that would give four that would come to the EPC Board to interview during the EPC meeting, seconded by Commissioner Murman. Mr. Petersen announced the final candidates would be Ms. Janet Dougherty, Mr. Musser, Attorney Tschantz, and Ms. Yeargan. Citing selection committee efforts, Chairman Miller voiced concern with including more candidates. Commissioner Higginbotham opined on candidate lobbying and clarified the term "final candidates." Noting the integrity of the selection method, Commissioner Beckner was hesitant to support the amendment. Subsequent to discussion, Commissioner Murman called the question on the amendment. ▶ The amendment carried four to three; Chairman Miller and Commissioners Beckner and Higginbotham voted no. ▶ The amended motion carried seven to zero.

IV. DISSOLUTION OF RECRUITMENT SCREENING COMMITTEE

▶ Following remarks from Mr. Petersen, ▶ Commissioner Higginbotham moved to dissolve the recruitment screening committee, seconded by Commissioner Hagan, and carried seven to zero.

V. GENERAL DISCUSSION ON INTERVIEW PROCESS AT THE NEXT EPC MEETING ON MAY 21, 2015

▶ Dialogue occurred on the interview format; EPC Board feedback; the interview process; postponing the May 21, 2015, budget workshop; interview time frame; and scheduling options. Stressing the importance of the interviews, ▶ Chairman Miller asked for a motion to move the budget workshop to 2:00 p.m. or 3:00 p.m. on May 20, 2015, and devote the EPC Board's total allotted time for the EPC interviews. Commissioner Higginbotham so moved, seconded by Commissioner Crist, and carried seven to zero. Mr. Petersen added comments on the interview procedure. Vote confirmation occurred.

WEDNESDAY, MAY 6, 2015 - DRAFT MINUTES

▶ There being no further business, the meeting was adjourned at 12:14 p.m.

READ AND APPROVED: \_\_\_\_\_  
CHAIRMAN

ATTEST:  
PAT FRANK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

jh

DRAFT

MAY 21, 2015 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, May 21, 2015, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Lesley Miller Jr. and Commissioners Kevin Beckner, Victor Crist (arrived at 9:09 a.m.), Ken Hagan (arrived at 9:17 a.m.), Al Higginbotham, Sandra Murman, and Stacy White.

▶ Chairman Miller called the meeting to order at 9:03 a.m.

▶ INVOCATION AND PLEDGE OF ALLEGIANCE

CHANGES TO THE AGENDA

▶ Dr. Richard Garrity, EPC Executive Director, explained Item III.G., approval of meeting minutes: April 30, 2015, EPC Executive Director Screening Committee, had changed from "approval of" to "receipt of" meeting minutes. ▶ **Commissioner Beckner moved the changes, seconded by Commissioner Murman, and carried five to zero.** (Commissioners Crist and Hagan had not arrived.)

I. PUBLIC COMMENT

▶ Mr. Joseph Robinson, P.O. Box 4505, Tampa, opined on personal environmental activism and advocated for Ms. Janet Dougherty as EPC Executive Director.

▶ Dr. Richard Brown, 1214 East Park Circle, endorsed Attorney Richard Tschantz as EPC Executive Director and believed the two women candidates were polarizing. Commissioner Murman felt Dr. Brown's comments were out of order.

▶ Mr. Anthony D'Aquila, 5020 Bayshore Boulevard, stressed the EPC Board responsibility, praised the EPC, and valued the EPC Executive Director Screening Committee efforts.

▶ Ms. Vivian Bacca, 413 El Greco Drive, supported the EPC process.

▶ Ms. Danielle Johnson, 11411 Donneymoor Drive, favored Ms. Dougherty as EPC Executive Director.

THURSDAY, MAY 21, 2015 - DRAFT MINUTES

II. CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Summary of recent CEAC meeting by CEAC Chairman

▶ Mr. Jason Gorrie, CEAC chairman, gave the report, thanked Dr. Garrity for service, and replied to Commissioner Crist about EPC Executive Director preferences.

III. CONSENT AGENDA

- A. Approval of Meeting Minutes: April 16, 2015
- B. Monthly Activity Report - April 2015
- C. Pollution Recovery Fund (PRF) Report - October 2014 through April 2015
- D. Monthly Legal Case Summary - May 2015
- E. Approval of Interlocal Agreement Between the EPC and Hillsborough County for National Pollutant Discharge Elimination System Compliance
- F. Agriculture Pesticide Collection PRF Project 14-03
- G. Receipt of Meeting Minutes: April 30, 2015 - EPC Executive Director Screening Committee

Following dialogue, ▶ Commissioner Beckner moved the Consent Agenda, seconded by Commissioner Murman, and carried five to zero. (Commissioners Crist and Hagan had not arrived.)

IV. EPC EXECUTIVE DIRECTOR INTERVIEW AND SELECTION

▶ Chairman Miller made introductory remarks and stressed the EPC Executive Director importance. ▶ Mr. Dane Petersen, Director, Civil Service Office, explained the interview process.

Ms. Janet Dougherty Interview

▶ After distributing documents and making opening statements, Ms. Dougherty answered Questions ▶ 1, ▶ 2, ▶ 3, 4, ▶ 5, 6, ▶ 7, 8, ▶ 9, and ▶ 10. ▶ Inquiries ensued on how business experience would compensate for the lack of a science degree, EPC strengths and weakness, Question 2, ▶ the EPC attaining the Governor's Sterling Award, achieving the EPC

THURSDAY, MAY 21, 2015 - DRAFT MINUTES

mission/vision/values/strategic plan, balancing business/community needs, and ► creating strong EPC/economic development alliances. Ms. Dougherty displayed a photograph and gave closing remarks.

Mr. Robert Musser Interview

► Subsequent to relaying introductory comments, Mr. Musser responded to Questions ► 1, 2, ► 3, 4, ► 5, 6, ► 7, 8, ► 9, and 10. ► EPC Board members asked about transferring port experience to the EPC, ► the Sterling program, fulfilling the EPC mission/values/vision, equally addressing private sector and public desires, and ► current EPC strengths and weakness. Mr. Musser provided closing observations.

Attorney Richard Tschantz Interview

► Following an opening statement, Attorney Tschantz replied to Questions ► 1, 2, ► 3, 4, ► 5, 6, ► 7, 8, ► 9, and 10. ► Inquiries occurred on the EPC permitting process, community outreach, best/worst EPC qualities, ► potential EPC improvements, hiring a new EPC General Counsel, transitioning to EPC Executive Director, ► possible EPC enhancements, and EPC/economic development collaboration. ► Attorney Tschantz offered closing remarks.

Ms. Mary Yeargan Interview

► After opening statements, Ms. Yeargan answered Questions ► 1, 2, 3, 4, 5, ► 6, 7, 8, 9, and 10. ► EPC Board members solicited responses on the EPC Brownfields program, promoting the EPC strategic plan, ► the EPC assets/deficiencies, reasons for pursuing the position, private-sector experience, the ability to collaborate with the development community, and potential business conflicts. ► Responding to Ms. Yeargan about possible EPC mission/function changes, EPC Board members touched on EPC one-stop permitting/streamlining, closer alliances with County agencies and the agricultural community, increasing public awareness of the EPC, expediting EPC processes/accountability, and building stronger stakeholder relationships. Ms. Yeargan made closing comments.



THURSDAY, MAY 21, 2015 - DRAFT MINUTES

Deliberation and Vote on the One Candidate to Whom a Job Offer Would be Extended

▶ Commissioner Miller touched on the deliberation procedures. After remarking on personal evaluations/preferences, ▶ Commissioner Crist moved the EPC go with Ms. Yeargan, seconded by Commissioner White for discussion. (The motion was not voted on.) Commissioner White pointed to the candidate qualities, asked stakeholder groups to respect the EPC Board's decision and work with the new EPC Director, and endorsed Mes. Dougherty and Yeargan. Commissioner Beckner detailed the selection committee work and supported Attorney Tschantz. ▶ Commissioner Higginbotham provided impressions of Mr. Musser and Ms. Dougherty. Subsequent to dialogue, ▶ **Commissioner Murman made a substitute motion to affirm Ms. Dougherty as the EPC Director, seconded by Commissioner Hagan, who made comments.** Following clarification by Chairman Miller, ▶ **the substitute motion carried five to two; Commissioners Beckner and Crist voted no.** ▶ **Commissioner Beckner moved to confirm Ms. Dougherty as the next Director of the EPC, seconded by Commissioner Hagan, and carried seven to zero.**

After statements from Ms. Dougherty, ▶ Chairman Miller sought a motion and vote to authorize the Chairman to negotiate the employment agreement to be brought before the EPC body. Conversation took place on Ms. Dougherty working pro bono with Dr. Garrity, to which Ms. Dougherty agreed. ▶ After Chairman Miller called for a motion to authorize and bring the contract back on June 18, 2015, **Commissioner Murman so moved, seconded by Commissioner Beckner, and carried seven to zero.**

▶ EPC Board members thanked Mr. Petersen, EPC Selection Committee Chairman Higginbotham, candidates, and Chairman Miller for service.

THURSDAY, MAY 21, 2015 - DRAFT MINUTES

▶ There being no further business, the meeting was adjourned at 2:57 p.m.

READ AND APPROVED: \_\_\_\_\_  
CHAIRMAN

ATTEST:  
PAT FRANK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

CW

DRAFT

**FY 15 - MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION**

**MAY**

**A. Public Outreach/Education Assistance**

1	Phone calls	161
2	Literature Distributed	6
3	Presentations	4
4	Media Contacts	1
5	Internet	31
6	Host/Sponsor Workshops, Meetings, Special Events	1

**B. Industrial Air Pollution Permitting**

1	Permit Applications received (Counted by Number of Fees Received)	
	a. Operating	8
	b. Construction	6
	c. Amendments / Transfers / Extensions	0
	d. Title V Operating:	7
	e. Permit Determinations	0
	f. General	3
2	Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval ( <sup>1</sup> Counted by Number of Fees Collected)-( <sup>2</sup> Counted by Number of Emission Units affected by the Review):	
	a. Operating 1	6
	b. Construction <sup>1</sup>	5
	c. Amendments / Transfers / Extensions <sup>1</sup>	0
	d. Title V Operating <sup>2</sup>	5
	e. Permit Determinations <sup>2</sup>	0
	f. General	1
3	Intent to Deny Permit Issued	0
<b>C. Administrative Enforcement</b>		
1	New cases received	1
2	On-going administrative cases	
	a. Pending	1
	b. Active	3
	c. Legal	0
	d. Tracking compliance (Administrative)	9
	e. Inactive/Referred cases	0
	<b>TOTAL</b>	<b>13</b>
3	NOIs issued	0
4	Citations issued	0
5	Consent Orders Signed	2
6	Contributions to the Pollution Recovery Fund	\$4,000.00
7	Cases Closed	1

**D. Inspections**

**FY 15 - MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION**

**MAY**

1	Industrial Facilities	10
2	Air Toxics Facilities	
	a. Area Sources (i.e. Drycleaners, Chrome Platers, etc.)	0
	b. Major Sources	2
3	Asbestos Demolition/Renovation Projects	17
<b>E.</b>	<b>Open Burning Permits Issued</b>	3
<b>F.</b>	<b>Number of Division of Forestry Permits Monitored</b>	297
<b>G.</b>	<b>Total Citizen Complaints Received</b>	58
<b>H.</b>	<b>Total Citizen Complaints Closed</b>	35
<b>I.</b>	<b>Noise Complaints Received by EPC (Chapter 1-10)</b>	26
<b>J.</b>	<b>Noise Complaints Received by Sheriff's Office (County Ord. #12-12)</b>	370
<b>K.</b>	<b>Number of cases EPC is aware that both EPC &amp; Sheriff responded</b>	4
<b>L.</b>	<b>List of Historical Sources EPC is aware that both EPC &amp; Sheriff responded</b>	
	a. The Rack (3)	
	b. 12302 Big Bend	
	c. Lake Keystone	
	d. Pro Way Recycling (2)	
	e. Cheval Athletic Club	
	f. Dixie Dockside	
	g. 2 Gardenias La Casa De Le Musica Cubana (2)	
	h. Airboats on Thonotosassa Lake	
	i. Dixie Dockside	
	j. Twilight Zone	
	k. South Fork - Park	
<b>M.</b>	<b>Noise Sources Monitored:</b>	3
<b>N.</b>	<b>Air Program's Input to Development Regional Impacts:</b>	1
<b>O.</b>	<b>Test Reports Reviewed:</b>	38
<b>P.</b>	<b>Compliance:</b>	
1	Warning Notices Issued	4
2	Warning Notices Resolved	4
3	Advisory Letters Issued	0
<b>Q.</b>	<b>AOR'S Reviewed</b>	5
<b>R.</b>	<b>Permits Reviewed for NESHAP Applicability</b>	2

FY 15 - MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION

MAY

S. Planning Documents coordinated for Agency Review	1
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**FY 15 - MONTHLY ACTIVITIES REPORT  
WASTE MANAGEMENT DIVISION**

MAY

**A. ENFORCEMENT**

1.	New cases received	
2.	On-going administrative cases	44
	Pending	1
	Active	16
	Legal	3
	Tracking Compliance (Administrative)	23
	Inactive/Referred Cases	1
3.	NOI's issued	-
4.	Citations issued	-
5.	Consent Orders and Settlement Letter Signed	-
6.	Civil Contributions to the Pollution Recover Fund (\$)	\$ -
7.	Enforcement Costs Collected (\$)	\$ -
8.	Cases Closed	-

**B. SOLID AND HAZARDOUS WASTE**

1.	FDEP Permits Received	1
2.	FDEP Permits Reviewed	1
3.	EPC Authorization for Facilities NOT Requiring DEP Permit	1
4.	Other Permits and Reports	
	County Permits Received	6
	County Permits Reviewed	6
	Reports Received (SW/HW + SQG)	20
	Reports Reviewed (SW/HW + SQG)	31
5.	Inspections (Total)	
	Complaints (SW/HW + SQG)	13
	Compliance/Reinspections (SW/HW + SQG)	13
	Facility Compliance	21
	Small Quantity Generator Verifications	145
	P2 Audits	0
6.	Enforcement (SW/HW + SQG)	
	Complaints Received	13
	Complaints Closed	16
	Warning Notices Issued	1
	Warning Notices Closed	1
	Compliance Letters	103
	Letters of Agreement	0
	Agency Referrals	4
7.	Pamphlets, Rules and Material Distributed	257

**C. STORAGE TANK COMPLIANCE**

1.	Inspections	
	Compliance	37
	Installation	4
	Closure	7
	Compliance Re-Inspections	4
2.	Installation Plans Received	6

**FY 15 - MONTHLY ACTIVITIES REPORT  
WASTE MANAGEMENT DIVISION**

MAY

3.	Installation Plans Reviewed	8
4.	Closure Plans & Reports	
	Closure Plans Received	-
	Closure Plans Reviewed	-
	Closure Reports Received	-
	Closure Reports Reviewed	1
5.	Enforcement	
	Non-Compliance Letters Issued	36
	Warning Notices Issued	-
	Warning Notices Closed	-
	Cases Referred to Enforcement	1
	Complaints Received	-
	Complaints Investigated	1
	Complaints Referred	-
6.	Discharge Reporting Forms Received	-
7.	Incident Notification Forms Received	4
8.	Cleanup Notification Letters Issued	-

**D. STORAGE TANK CLEANUP**

1.	Inspections	50
2.	Reports Received	52
3.	Reports Reviewed	65
	Site Assessment Received	5
	Site Assessment Reviewed	6
	Source Removal Received	1
	Source Removal Reviewed	1
	Remedial Action Plans (RAP'S) Received	3
	Remedial Action Plans (RAP'S) Reviewed	2
	Site Rehabilitation Completion Order/No Further Action Rec'	1
	Site Rehabilitation Completion Order/No Further Action Rev	2
	Active Remediation/Monitoring Received	18
	Active Remediation/Monitoring Reviewed	24
	Others Received	24
	Others Reviewed	30

**E. RECORD REVIEWS** 18

**F. LEGAL PIR'S** 18

**FY 15 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

MAY

<b>A. ENFORCEMENT</b>		
1.	New Enforcement Cases Received	-
2.	Enforcement Cases Closed	1
3.	Enforcement Cases Outstanding	13
4.	Enforcement Documents Issued	1
5.	Recovered Costs to the General Fund	\$ 198
6.	Contributions to the Pollution Recovery Fund	\$ 2,406
<b>B. PERMITTING/PROJECT REVIEW - DOMESTIC</b>		
1.	Permit Applications Received	<b>20</b>
	a. Facility Permit	9
	(i) Types I and II	1
	(ii) Type III	9
	b. Collection Systems - General	3
	c. Collection systems-Dry Line/Wet Line	7
	d. Residuals Disposal	-
2.	Permit Applications Approved	<b>27</b>
	a. Facility Permit	8
	b. Collection Systems - General	5
	c. Collection systems-Dry Line/Wet Line	11
	d. Residuals Disposal	-
	e. Final Construction Approval	3
3.	Permit Applications Recommended for Disapproval	-
	a. Facility Permit	-
	b. Collection Systems - General	-
	c. Collection systems-Dry Line/Wet Line	-
	d. Residuals Disposal	-
4.	Permit Applications (Non-Delegated)	1
	a. Recommended for Approval	1
5.	Permits Withdrawn	-
	a. Facility Permit	-
	b. Collection Systems - General	-
	c. Collection systems-Dry Line/Wet Line	-
	d. Residuals Disposal	-
6.	Permit Applications Outstanding	<b>23</b>
	a. Facility Permit	9
	b. Collection Systems - General	8
	c. Collection systems-Dry Line/Wet Line	4
	d. Residuals Disposal	-
7.	Permit Determination	2
8.	Special Project Reviews	-



**FY 15 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

**MAY**

	a. Reuse	-
	b. Residuals/AUPs	-
	c. Others	-
<b>C. INSPECTIONS - DOMESTIC</b>		
1.	Compliance Evaluation	7
	a. Inspection (CEI)	3
	b. Sampling Inspection (CSI)	4
	c. Toxics Sampling Inspection (XSI)	-
	d. Performance Audit Inspection (PAI)	-
2.	Reconnaissance	25
	a. Inspection (RI)	5
	b. Sample Inspection (SRI)	-
	c. Complaint Inspection (CRI)	20
	d. Enforcement Inspection (ERI)	-
3.	Engineering Inspections	13
	a. Reconnaissance Inspection (RI)	-
	b. Sample Reconnaissance Inspection (SRI)	-
	c. Residual Site Inspection (RSI)	-
	d. Preconstruction Inspection (PCI)	-
	e. Post Construction Inspection (XCI)	13
	f. On-site Engineering Evaluation	-
	g. Enforcement Reconnaissance Inspection (ERI)	-
<b>D. PERMITTING/PROJECT REVIEW - INDUSTRIAL</b>		
1.	Permit Applications Received	4
	a. Facility Permit	2
	(i) Types I and II	-
	(ii) Type III with Groundwater Monitoring	-
	(iii) Type III w/o Groundwater Monitoring	2
	b. General Permit	-
	c. Preliminary Design Report	2
	(i) Types I and II	2
	(ii) Type III with Groundwater Monitoring	-
	(iii) Type III w/o Groundwater Monitoring	-
2.	Permits Recommended to DEP for Approval	2
3.	Special Project Reviews	4
	a. Facility Permit	4
	b. General Permit	-
4.	Permitting Determination	-
5.	Special Project Reviews	28

**FY 15 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

MAY

	a. Phosphate	5
	b. Industrial Wastewater	12
	c. Others	11
<b>E. INSPECTIONS - INDUSTRIAL</b>		
1.	Compliance Evaluation (Total)	<b>15</b>
	a. Inspection (CEI)	14
	b. Sampling Inspection (CSI)	1
	c. Toxics Sampling Inspection (XSI)	-
	d. Performance Audit Inspection (PAI)	-
2.	Reconnaissance (Total)	<b>13</b>
	a. Inspection (RI)	4
	b. Sample Inspection (SRI)	-
	c. Complaint Inspection (CRI)	9
	d. Enforcement Inspection (ERI)	-
3.	Engineering Inspections (Total)	<b>12</b>
	a. Compliance Evaluation (CEI)	11
	b. Sampling Inspection (CSI)	-
	c. Performance Audit Inspection (PAI)	-
	d. Complaint Inspection (CRI)	1
	e. Enforcement Reconnaissance Inspections (ERI)	-
<b>F. INVESTIGATION/COMPLIANCE</b>		
1.	Citizen Complaints	
	a. Domestic	<b>31</b>
	(i) Received	10
	(ii) Closed	21
	b. Industrial	<b>18</b>
	(i) Received	6
	(ii) Closed	12
2.	Warning Notices	
	a. Domestic	<b>1</b>
	(i) Issued	-
	(ii) Closed	1
	b. Industrial	<b>1</b>
	(i) Issued	1
	(ii) Closed	-
3.	Non-Compliance Advisory Letters	<b>10</b>
4.	Environmental Compliance Reviews	<b>102</b>
5.	Special Project Reviews	<b>7</b>
<b>G. RECORD REVIEWS</b>		

**FY 15 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

**MAY**

1.	Permitting Determination	2
2.	Enforcement	-
<b>H. ENVIRONMENTAL SAMPLES ANALYZED/REPORTS REVIEWED (LAB)</b>		
1.	Air division	51
2.	Waste Division	-
3.	Water Division	5
4.	Wetlands Division	-
5.	ERM Division	192
6.	Biomonitoring Reports	1
7.	Outside Agency	15
<b>I. SPECIAL PROJECT REVIEWS</b>		
1.	DRIs	1
2.	ARs	-
3.	Technical Support	1
4.	Other	1

**FY 15 - MONTHLY ACTIVITIES REPORT  
WETLANDS MANAGEMENT DIVISION**

**MAY**

**A. General**

1.	Telephone conferences	683
2.	Unscheduled Citizen Assistance	455
3.	Scheduled Meetings	306
4.	Correspondence	1,884
1/ 5.	Intergency Coordination	46
1/ 6.	Trainings	18
1/ 7.	Public Outreach/Education	6
1/ 8.	Quality Control	36

**B. Assessment Reviews**

1.	Wetland Delineations	28
2.	Surveys	15
3.	Miscellaneous Activities in Wetland	31
4.	Mangrove	-
5.	Notice of Exemption	5
6.	Impact/Mitigation Proposal	4
7.	Tampa Port Authority Reviews	90
8.	Wastewater Treatment Plants (FDEP)	-
9.	Development Regn'l Impact (DRI) Annual Report	-
10	On-Site Visits	162
11	Phosphate Mining	-
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	1
16	Rezoning Reviews	13
17	Site Development	11
18	Subdivision	38
19	Wetland Setback Encroachment	1
20	Easement/Access-Vacating	-
21	Pre-Applications	59
1/ 22	Agriculture Exemption	-
	Sub-Total	
	<b>Total Assessment Review Activities</b>	

**C. Investigation and Compliance**

1.	Warning Notices Issued	10
2.	Warning Notices Closed	3
1/ 3.	Complaints Closed	21
4.	Complaint Inspections	36
5.	Return Compliance Inspections for Open Cases	34

**FY 15 - MONTHLY ACTIVITIES REPORT  
WETLANDS MANAGEMENT DIVISION**

MAY

6.	Mitigation Monitoring Reports	16
7.	Mitigation Compliance Inspections	-
8.	Erosion Control Inspections	-
9.	MAIW Compliance Site Inspections	3
10	TPA Compliance Site Inspections	7
2/ #	Mangrove Compliance Site Inspections	-
1/ #	Conservation Easement Inspection	-

**D. Enforcement**

1.	Active Cases	8
2.	Legal Cases	2
3.	Number of "Notice of Intent to Initiate Enforcement"	2
4.	Number of Citations Issued	-
5.	Number of Consent Orders Signed	1
6.	Administrative - Civil Cases Closed	3
7.	Cases Referred to Legal Department	2
8.	Contributions to Pollution Recovery	\$2,000
9.	Enforcement Costs Collected	\$ 249

**E. Ombudsman**

1.	Agriculture	4
2.	Permitting Process & Rule Assistance	12
3.	Staff Assistance	2
4.	Citizen Assistance	3

**FY 15 - MONTHLY ACTIVITIES REPORT  
WETLANDS MANAGEMENT DIVISION**

MAY

**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	59
Timeframes Met	100%
Year to Date	98%

**Formal Wetland Delineation Surveys**

Projects	12
Total Acres	917
Total Wetland Acres	244
# Isolated Wetlands < 1/2 Acre	4
Isolated Wetland Acreage	0.97

**Construction Plans Approved**

Projects	9
Total Wetland Acres	24
#Isolated Wetlands < 1/2 Acre	3
Isolated Wetland Acreage	0.24
Impacts Approved Acreage	1.73
Impacts Exempt Acreage	0.24

**Mitigation Sites in Compliance**

Ratio	5/8
Percentage	63%

**Compliance Actions**

Acreage of Unauthorized Wetland Impacts	1.00
Acreage of Water Quality Impacts	0.00
Acreage Restored	0.60

**TPA Minor Work Permit**

Permit Issued	20
Permits Issued Fiscal Year 2014	218
Cumulative Permits Issue Since TPA Delegation (07/09)	1,295

**REVIEW TIMES**

# of Reviews	362
% On Time	95%
% Late	5%

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
FY 15 POLLUTION RECOVERY FUND  
10/1/2014 through 5/31/2015**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 537,486	Artificial Reef	\$ 24,632	Minimum Balance	\$ 120,000	
Interest	\$ 3,385	Open Projects	\$ 259,842	Proj. FY 16 Budgets	\$ 24,632	
Deposits	\$ 236,173			Asbestos Removal	\$ 5,000	
Fund 10132 Balance	\$ 210,964					
Total	\$ 988,008	Total	\$ 284,474	Total	\$ 149,632	\$ 553,902



PROJECT		Project Amount	Project Balance
<b>FY 12 Projects</b>			
Bahia Beach Mangrove Enhancement	10131.102063.581990.5370.1187	\$ 56,700	\$ 56,700
USGS Partnership	10131.102063.581990.5370.1188	\$ 25,000	\$ 18,750
		\$ 81,700	\$ 75,450
<b>FY 13 Projects</b>			
USF Fertilizer Study Peer Review	10131.102063.581990.5370.1189	\$ 25,000	\$ 25,000
Community Partnering Program	10131.102073.582990.5370.0000	\$ 15,000	\$ 15,000
		\$ 40,000	\$ 40,000
<b>FY 14 Projects</b>			
Mercury Collection Public Education	10131.102063.581990.5370.1176	\$ 5,000	\$ 5,000
Electric Car Charging Station Software	10131.102063.581990.5370.1175	\$ 4,200	\$ 1,400
Audubon Oyster Bar Restoration	10131.102063.582990.5370.1177	\$ 50,000	\$ 32,980
Lake Magdalene Outfall	10131.102063.582990.5370.1178	\$ 50,000	\$ 50,000
		\$ 109,200	\$ 89,380
<b>FY 15 Projects</b>			
TBW Rock Ponds Wetland Restoration	10131.102063.582990.5370.1247	\$ 50,000	\$ 50,000
Agricultural Pesticide Collection Day	10131.102063.581990.5370.1248	\$ 24,241	\$ -
East Lake Watershed Edu. & Restoratio	10131.102063.582990.5370.1249	\$ 5,012	\$ 5,012
		\$ 79,253	\$ 55,012
			\$ 259,842

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## *ENVIRONMENTAL PROTECTION COMMISSION*

### *AGENDA ITEM COVER SHEET*

**Date of EPC Meeting:** June 18, 2015

**Subject:** Monthly Legal Case Summary – June 2015

**Agenda Section:** Consent Agenda

**Item:** Legal and Administrative Services Division

**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 in the event a legal matter is discussed by the Commission. 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. – permitting decision or enforcement order), while concurrently attempting to seek resolution of the agency action.

## EPC LEGAL DEPARTMENT MONTHLY REPORT

June 2015

### I. ADMINISTRATIVE CASES

**Jeffrey Willis and Terri Willis** [14-EPC-008]: The Appellants filed a Notice of Appeal on July 3, 2014 challenging the issuance of the TPA Minor Work Permit No. 56663. On July 22, 2014 a Hearing Officer was appointed and the appeal was transferred to the Hearing Officer to conduct an administrative hearing in this matter. On July 25, 2014, the Hearing Officer issued an Order of Consolidation joining this appeal with two other appeals that challenge the same Agency decision; 14-EPC-005; 14-EPC-006; and 14-EPC-008. The Hearing Officer and parties conducted an administrative hearing on March 5<sup>th</sup> and 6<sup>th</sup>. A Recommended Order has been entered by the Hearing Officer, exceptions to the Recommended Order and responses to the Exceptions have been filed by the parties and the Final Order Hearing is scheduled for June 18, 2015.(AZ)

**Larry Kent and Julia Vincent Kent** [14-EPC-006]: The Appellants filed a Notice of Appeal on July 3, 2014 challenging the issuance of the TPA Minor Work Permit No. 56663. On July 22, 2014 a Hearing Officer was appointed and the appeal was transferred to the Hearing Officer to conduct an administrative hearing in this matter. On July 25, 2014, the Hearing Officer issued an Order of Consolidation joining this appeal with two other appeals that challenge the same Agency decision; 14-EPC-005; 14-EPC-006; and 14-EPC-008. See above for current status. (AZ)

**Randy Ogden and Mindy Ogden** [14-EPC-005]: The Appellants filed a Notice of Appeal on July 1, 2014 challenging the issuance of the TPA Minor Work Permit No. 56663. On July 22, 2014 a Hearing Officer was appointed and the appeal was transferred to the Hearing Officer to conduct an administrative hearing in this matter. On July 25, 2014, the Hearing Officer issued an Order of Consolidation joining this appeal with two other appeals that challenge the same Agency decision; 14-EPC-005; 14-EPC-006; and 14-EPC-008. See above for current status. (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. This matter has been placed in abeyance as the parties are discussing options.(AZ)

**Robert Vance v. John Vath and EPC** [15-EPC-001]: On January 15, 2015, the Appellant filed a request for an extension of time to file an Appeal challenging the issuance of Tampa Port Authority MWP #54731 for the construction of a dock. The request was granted and the Appellant had until March 2, 2015 to file an appeal in this matter. On February 17, 2015 the Appellant filed the administrative appeal and the matter was assigned to a Hearing Officer to conduct an evidentiary hearing. An Administrative Hearing was conducted on June 1, 2015. A Recommended Order will be filed by the Hearing Officer in accordance with Chapter 1-2, Rules of the EPC. (AZ)

### II. CIVIL CASES

**WOB S. Tampa, LLC** [14-EPC-003]: On May 15, 2014, the World of Beer in South Tampa filed a Complaint in Civil Court for declaratory and injunctive relief against the City of Tampa and EPC regarding noise pollution issues. A trial was set for early January 2015. The parties agreed at mediation to abate the litigation and continue to negotiate. Currently it is abated through August. (RM)

**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 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. An appeal of the denial was dismissed. The EPC moved for contempt for failure to restore the wetland, but the Court ordered the EPC to conduct the wetland remediation and to tax those costs to the Defendants. The Harts began the remediation process in early February 2015 by removing some of the fill and planting ferns. The remediation is currently in the plant survival monitoring phase. (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 obtained an award of stipulated penalties from the state court. The site remains out of compliance with applicable EPC solid waste regulations and no liens have been paid. The bankruptcy case is ongoing. (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)

**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)

**Thomas Jennings and Lorene Hall-Jennings** [14-EPC011]: On October 7, 2014, the EPC was served with a Declaratory Action challenging the validity of a conservation easement conveyed to the EPC on September 16, 1997. The EPC Legal Department has responded to the lawsuit with an Answer and Affirmative Defenses on October 27, 2014 and the case will move forward as appropriate. (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.

(NONE)

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## ENVIRONMENTAL PROTECTION COMMISSION

### AGENDA ITEM COVER SHEET

**Date of EPC Meeting:** June 18, 2015

**Subject:** Final Order Hearing regarding Ogden, et al. vs Truex and EPC (Case No. 14-EPC-005, consolidated - an appeal of a dock permit issued by the EPC)

**Agenda Section:** Regular Agenda

**Item:** Wetlands Management Division

**Recommendation:** Conduct a Final Order Hearing to consider and take action on the Hearing Officer's Recommended Order. Authorize the Chair to execute a Final Order based on the Commission's ruling.

**Brief Summary:** The EPC issued a dock permit to Appellee Truex to construct a 32.5 foot long dock with a roof covering a boatlift area. The Truexes live on a cul-de-sac shaped canal on the northwest side of Davis Island. The permit application for the dock was processed and approved by EPC staff in accordance with Tampa Port Authority rules that are delegated to the EPC. Appellants Ogden, Kent, and Willis reside on the same canal. They are opposed to the dock permit and filed appeals against it. An administrative hearing was conducted on March 5 and 6, 2015. The Hearing Officer issued a Recommended Order approving the dock permit. The Commission must sit in a quasi-judicial capacity to hear oral arguments and then affirm, reverse, or modify the Hearing Officer's Recommended Order through issuance of a final order. The Executive Director's counsel and Truexes' counsel will present argument as to why the Commission should affirm the Recommended Order and grant the dock permit. The Appellants and their counsel will present argument as to why the Commission should reject the Recommended Order and deny the dock permit. Each party has ten minutes to argue their case.

**Financial Impact:** EPC Legal expenses funded through existing budget.

**Background:** The Port Tampa Bay a/k/a Tampa Port Authority (TPA) owns and regulates the submerged lands in the majority of Tampa Bay and rivers in Hillsborough County. TPA has Submerged Lands Management Rules that govern the placement and construction of various marine structures, such as docks, on those submerged lands (i.e. - jurisdictional lands). Persons must apply for permits to build on the TPA's submerged lands. The Environmental Protection Commission was delegated certain marine construction permitting authority from the TPA as part of our streamlined wetland permitting program. The TPA delegation authorizes the EPC to administer, with some exceptions, the TPA's minor work permit program. This generally involves processing permits for seawalls, smaller docks, and maintenance dredging activities and also doing follow-up compliance reviews.

Bryan and Janet Truex of 64 Bahama Circle, Tampa, Florida live on a cul-de-sac shaped canal on the northwest side of Davis Island. They applied to the EPC for a dock permit (a/k/a Minor Work Permit). On March 12, 2014, the EPC issued Minor Work Permit No. 56663 (see attached) which authorizes the construction a 32.5 foot long dock with a roof covering a boatlift area. Based on the permit, the dock contractor for Truex placed pilings in the water in June 2014.

Shortly thereafter, three neighbors, Appellants Ogden, Kent, and Willis, filed appeals to the permit and the dock was not completed pending the outcome of this challenge. The Appellants all reside on the same canal, just not adjacent to the Truex property. In general, they challenged the permit based on concerns about navigational safety and impacts to their view of the water.

An EPC permit challenge, legally referred to as Section 9 Appeal, is a grievance method established by the Florida Legislature in the EPC Act. Specifically, a person who alleges an EPC final action (e.g. - permit) adversely affects them can have an administrative hearing officer review their objections via a process very similar to a civil trial. After the administrative hearing, the hearing officer issues a recommended order (RO). The parties can file exceptions to the RO and argue them before the Commission. The Commission must review the RO, determine if any exceptions to the RO are necessary, and render a final order.

As noted above, the Appellants asked for a Section 9 Appeal administrative hearing in this matter and it was conducted on March 5 and 6, 2015. Hearing Officer Vanessa Cohn issued a Recommended Order on April 23, 2015, affirming the EPC's issuance of a dock permit. Among other things, Ms. Cohn ruled that the proposed dock and roof will not interfere with navigation and does not violate the Appellants' riparian right of unobstructed view. Moreover, Ms. Cohn found that the pilings that were already installed extend 31.3 feet from the seawall and she concluded that the permitted dock length should not exceed 31.5 feet from the seawall. While this is one foot less than originally permitted by the EPC, the Truexes did not file an exception to Ms. Cohn's slight revision to the permit criteria.

Only one of the Appellants, the Ogden family, filed exceptions to the Hearing Officer's ruling and they claim there are three areas of the recommended order that are in error and thus merit denial. The three issues in the Recommended Order that the Appellants filed an exception to are as follows:

1. the Hearing Officer's rejection of the canal width measurement method that the Appellants' utilized;
2. that the proposed dock is within the dock-line of the other docks in that region; and
3. that the Appellants' riparian right to an unobstructed view is not affected by the proposed structure.

The EPC and the Truexes have filed responses to the Appellants' exceptions, arguing that the Hearing Officer ruled appropriately on those three issues and that the dock permit should be affirmed.

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 hear oral argument and then affirm, reverse, or modify the Hearing Officer's Recommended Order through issuance of a Final Order. Each party has ten minutes to argue their case, unless the Commission directs differently. The Executive Director's counsel that litigated the case and Truex counsel will present arguments as to why the Hearing Officer's ruling should be affirmed and that the Commission should issue a final order granting the dock permit. The Appellants and their counsel will present argument as to why the Commission should take exception to the Hearing Officer's order and issue a final order denying the permit. During the hearing, the Commission will have an opportunity to ask questions of the parties. The Commission may also seek legal advice from the Commission attorney that was not involved in the litigation.

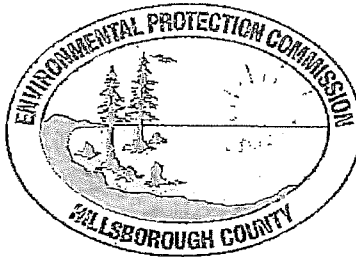
The Commission must only consider documents in the appellate file and relevant legal arguments presented to them at the Commission's Final Order hearing. No new evidence may be introduced by anyone or considered by the Commission. Moreover, it is established by rule and case law that a hearing officer's findings of fact may only be rejected or modified if the Commission "finds that the fact is not supported by substantial competent evidence in the record" (Section 1-2.35, Rules of the EPC). Furthermore, the Commission should not make any ruling that conflicts with the EPC Act and rules. If the Commission feels further facts are needed before they render a ruling, the rules also allow the Commission to remand the case back to the Hearing Officer for additional findings.

The counsel for the Commission will prepare a Final Order based on the direction of the Commission and present it to the EPC Chair for execution.

This agenda item includes the permit, Hearing Officer's Recommended Order, the Appellants Exceptions to the Recommended Order, the EPC's Response to the Exceptions, and the Truexes' Response to the Exceptions. Additionally, the Commissioners will have access to the hearing transcript and exhibits for their consideration.

Please note that due to work conflicts, the Ogden's counsel will appear at the hearing by telephone.

**List of Attachments:** Permit, Recommended Order (RO), Ogden's Exceptions to the RO, EPC Response to Ogden's Exceptions, and Truex Response to Ogden Exceptions.



**COMMISSION**

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

**DIVISION DIRECTORS**

Legal & Admin.     Richard Tschantz, Esq.  
Air Management     Jerry Campbell, PE  
Waste Management     Hooshang Boostani, PE  
Water Management     Sam Elrabi, PE  
Wetlands Management     Scott Emery, Ph.D.

**EXECUTIVE DIRECTOR**

Richard D. Garrity, Ph.D.

# PERMIT

**PERMIT NUMBER:** 56663

**PERMITTEE:** BRYAN AND JANET TRUEX  
64 BAHAMA CIRCLE  
TAMPA, FL 33606

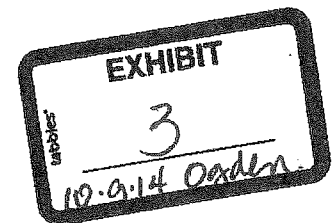
**AGENT:** Kevin McNamara  
C/O Bay Dock Enterprises, Inc.  
9002 W. Hillsborough Avenue  
Tampa, FL 33615

**PROJECT DESCRIPTION:** THE CONSTRUCTION OF 32.5 FOOT LONG BOAT DOCK WITH A COVERED BOAT LIFT PURSUANT TO PERMIT EXHIBITS AND STIPULATIONS

**PROJECT LOCATION:** 64 BAHAMA CIRCLE / HILLSBOROUGH BAY, CITY OF TAMPA

**DATE OF ISSUE:** MARCH 12, 2014

**EXPIRATION DATE:** MARCH 31, 2015



**AUTHORIZED SIGNATURE:** \_\_\_\_\_

Scott Emery, Ph. D. - Wetlands Management Division Director

**THIS NOTICE MUST BE CONSPICUOUSLY  
DISPLAYED AT THE SITE OF WORK**

**TRUEX EXHIBIT 2**

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

Roger P. Stewart Center  
3629 Queen Palm Drive, Tampa, FL 33619 • (813) 627-2600 • www.epchc.org

*An Affirmative Action/Equal Opportunity Employer*



ENVIRONMENTAL PROTECTION COMMISSION PERMIT STIPULATIONS  
MINOR WORK PERMIT No. 56663  
SPECIFIC STIPULATIONS  
March 12, 2014

1. This permit authorizes the construction of a 32.5 foot long boat dock with a covered boat lift.
2. The structure shall be placed within the property limits as depicted per EPC approved permit exhibits A1, A2 and A3.
3. The roof is to cover the boatlift area only as depicted on EPC approved permit exhibits A1, A2 and A3
4. The water depths in mooring areas shall be no less than two (2) feet at Mean Low Water (MLW).
5. No dredging, filling, clearing or scouring shall be allowed except for the settings of pilings for the pier and terminal platform. If pilings are to be installed by jetting, then the water pump must be shut off when not in use to avoid unnecessary disturbance to the water body.
6. All structures should be marked with reflectors, reflective tape or other materials necessary to make the extent of structures clearly visible to boaters in accordance with the requirements of the United States Coast Guard and the Florida Marine Patrol.
7. Structures shall not be enclosed.
8. This permit does not authorize the placement of pilings or any other structures extraneous to the dock and boatlift system.
9. There shall be no baithouses, storage shelters, gazebos, screen porches, fish cleaning facilities, living quarters or other non-water dependent structures.
10. No davits are permitted for this structure.
11. Terminal platforms and catwalks shall maintain a minimum of 1-foot vertical elevation above the Mean High Water (MHW) elevation.
12. Watercraft associated with the construction of the permitted structure shall operate within the waters of sufficient depth to preclude bottom scouring/prop dredging.
13. As the structure is within the limits of the City of Tampa (COT), a permit from the City's Construction Services Department may be required. Please contact COT staff at (813) 274-3100 for further information.
14. More stringent criteria than those detailed in this permit may be applicable as per deed restrictions. It is strongly encouraged that the Permittee contact representatives of their homeowners association for more information prior to initiation of any construction activities authorized by this permit.

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



15. The Permittee must comply with the following manatee protection construction conditions:
- a. Instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s).
  - b. Advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection act of 1972, The Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act.
  - c. Ensure all/any siltation barriers shall be made of material in which manatees cannot become entangled, are properly secured, and are regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exit from essential habitat.
  - d. Ensure all vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
  - e. If manatee(s) are seen within 100 yards of the active daily construction/dredging operation or vessel movement, ensure all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will not resume until the manatee(s) has departed the project area of its own volition.
  - f. Ensure any collision with and/or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission at FWC Hotline at 1-888-404-FWCC and to the U. S. Fish and Wildlife Service, Jacksonville Office (1-904-232-2580) for north Florida or the Vero Beach Office (1-772-562-3909) for south Florida.
  - g. Ensure temporary signs concerning manatees shall be posted prior to and during all construction/dredging activities. Ensure all signs are removed upon completion of the project. A sign measuring at least 3 ft. by 4 ft. which reads Caution: Manatee Area will be posted in a location prominently visible to water-related construction crews. A second sign should be posted if vessels are associated with the construction, and should be placed visible to the vessel operator. The second sign should be at least 8.5" by 11" which reads Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of operation. Any collision with and/or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission at FWC Hotline @ 1-888-404-FWCC and The U. S. Fish and Wildlife Service should also be contacted in Jacksonville (1-904-232-2580) for north Florida.

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ENVIRONMENTAL PROTECTION COMMISSION  
MINOR WORK PERMIT GENERAL STIPULATIONS

1. All work shall be accomplished so as to minimize the dispersion of silt and debris and the destruction of marine resources in public waters. All efforts must be undertaken to prevent any erosion or turbid water from being discharged off-site, into the wetlands and/or waters of the County. Turbid discharges that exceed 29 Nephelometric Turbidity Units above background levels are a violation pursuant to Chapter 1-5 Water Quality Rule. In Outstanding Florida Waters, discharges cannot exceed ambient levels. EPC approved methods of erosion and/or turbidity control are required. It is the owner / developer's responsibility to install and maintain EPC approved erosion and / or turbidity control barriers prior to the commencement of any site work. Once the site returns to pre-construction conditions, all erosion and turbidity control devices shall be removed.
2. If the approved permit drawings and the attached Specific Stipulations contradict each other, then the Specific Stipulations shall prevail.
3. The proposed work shall be done in accordance with the approved drawings attached hereto as Exhibits.
4. The Permittee shall notify the Environmental Protection Commission (EPC) when work under this permit is initiated and shall further notify the EPC when work under this permit has been completed.
5. The enclosed Permit Card must be conspicuously displayed at the project site once work on this project has been initiated and shall remain so displayed until the project has been completed. Within fifteen (15) days of completion of this project, the Permit Card must be returned to the EPC.
6. The EPC shall inspect the site to insure compliance with these stipulations.
7. The proposed work shall be done so as to prevent interference with the riparian or property rights of the adjacent property owners. This permit authorizes no invasion of private property or rights in property.
8. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in this permit and Chapter 1-11 or other applicable rules.
9. This approval applies only to the development proposal as submitted, and in no way does it provide EPC approval to any other aspect of the review process. This permit does not relieve the Permittee from the requirement of obtaining permits from the State of Florida, the Southwest Florida Water Management District, Hillsborough County, individual municipalities within Hillsborough County, and/or other applicable agencies, as required.
10. Your proposed activity as outlined on your application and attached drawings may not qualify for Federal authorization and a separate permit or authorization may be required from the Corps. Therefore the EPC recommends you contact the Corps at (813) 769-7068 to determine whether a permit will be required. If it is determined by the Corps that a permit is required, they will issue their authorization directly to you or contact you if additional information is needed. Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.
11. The Permittee, in accepting this permit, agree to comply with the provisions, conditions and stipulations herein and assumes all responsibilities and liability and agrees to hold the EPC and the Tampa Port Authority harmless from any and all claims of damage arising out of operations conducted pursuant to this permit.
12. The Permittee shall operate and maintain the authorized structure in such a manner so as to prevent the

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creation of any navigation hazards, unauthorized source of air or water pollution, hazard to public health and safety, or so as to unduly interfere with the public's use of the waterway.

13. Should the Permittee fail to comply with the stipulations of this permit or a situation arise wherein it would be contrary to the public interest, the EPC reserves the right to revoke this permit upon written notice to the Permittee.
14. This permit does not relieve the Permittee from the requirements of any applicable deed restrictions.
15. Construction materials, debris, or other trash will not be allowed to escape into the water, at anytime during or after construction. Such materials are to be disposed of in an approved manner, i.e., upland disposal facility, appropriate trash receptacles, etc.
16. It shall be the responsibility of the permittee to submit a renewal application request 30 days prior to the expiration date.
17. Any activity interfering with the integrity of a wetland, such as clearing, excavating, draining or filling, without the written authorization from the Executive Director of the EPC or his authorized agent, pursuant to Section 1-11.07, Rules of the EPC, would be a violation of Section 17 of the Environmental Protection Act of Hillsborough County, Chapter 84-446, and Chapter 1-11, Rules of the EPC.

This Order is final unless the party timely files, pursuant to Chapter 1-2, Part IV, Rules of the EPC, a Notice of Appeal or files a Request for Extension of Time to file a Notice of Appeal for a formal hearing. Pursuant to Section 1-2.31(e), Rules of the EPC, failure to request an administrative hearing by filing a Notice of Appeal within 20 days after receipt of this Order shall constitute a waiver of one's right to have an appeal heard, and this unappealed Order shall automatically become a final and enforceable Order of the Commission.

Although not required by law, it is recommended that the permittee publish at its own expense the following notice of this agency action in a newspaper of general circulation as identified in Section 1-2.051(4), Rules of the EPC in Hillsborough County, Florida so as to provide constructive notice to potentially aggrieved parties and to limit the time period for filing an administrative appeal. Failure to publish this notice may result in third parties being able to challenge this Minor Work Permit in the future. It is also recommended that no activity authorized by this permit occur until twenty days after publication of this notice or until twenty days after receipt by any party who requested in writing notice of this permit.

**ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**  
**NOTICE OF MINOR WORKS PERMITS**

The Environmental Protection Commission of Hillsborough County gives notice of agency action of issuance of a Minor Work permit to \_\_\_\_\_ pursuant to Chapter 84-446, Laws of Florida, as amended and delegation agreement with the Tampa Port Authority dated June 23, 2009. The Minor Work permit addresses approval for impacts to wetlands or other surface water for \_\_\_\_\_ at \_\_\_\_\_. The permit is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Environmental Protection Commission, 3629 Queen Palm Dr., Tampa, Florida 33619. Pursuant to Section 9, Chapter 84-446, Laws of Florida, and Rule 1-2.30, Rules of the EPC, any person whose interests protected by Chapter 84-446, Laws of Florida, are adversely affected by this action or are otherwise aggrieved by this action, has the right to appeal this agreement in accordance with Part IV of Rule 1-2, Rules of the EPC. Written notice of appeal must be received by the Chairperson of the EPC, at 601 East Kennedy Blvd., Tampa, Florida 33602, within 20 days of the date of this publication.

**NOTICE OF RIGHTS**

Pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, (EPC Act), Rule 1-2.30, Rules of the Environmental Protection Commission of Hillsborough

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County (EPC), and the Amended and Restated Interlocal Agreement with the Tampa Port Authority dated June 23, 2009, any person whose interests are protected by Chapter 84-446, Laws of Florida and who is adversely affected or otherwise aggrieved by this action has the right to appeal this Executive Director's authorization. Written Notice of Appeal for a Section 9 Administrative Hearing must be received by the Chairperson of the EPC, at 601 East Kennedy Blvd., Tampa, Florida 33602, within twenty (20) days of receipt of this notice and pursuant to Section 1-2.30(c), Rules of the EPC, must include the following information:

- (1) The name, address, and telephone number of the Appellant; the name, address, and telephone number of the Appellant's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the Appellant will be aggrieved or how his or her interests will be adversely affected by the Executive Director's decision;
- (2) A statement of when and how the Appellant received notice of the agency decision;
- (3) A statement of all disputed issues of material fact. If there are none, the Notice of Appeal must so indicate;
- (4) The specific facts the Appellant contends warrant reversal or modification of the Executive Director's proposed action;
- (5) A statement of the specific laws or rules the Appellant contends require reversal or modification of the Executive Director's proposed action; and
- (6) A statement of the relief sought by the Appellant, stating precisely the action Appellant wishes the Commission to take with respect to the Executive Director's proposed action or decision.

A copy of the Notice of Appeal for a Section 9 Administrative Hearing must also be sent to the EPC's Legal Department, Environmental Protection Commission of Hillsborough County, 3629 Queen Palm Dr., Tampa, Florida 33619, facsimile (813) 627-2602, phone (813) 627-2600. Pursuant to Section 1-2.31, Rules of the EPC, you may request additional time to file a Notice of Appeal by filing a Request for Extension of Time to file a Notice of Appeal. The Request for Extension of Time must be sent to and received by the EPC Legal Department at the address above within twenty (20) days of receipt of this notice.

Upon receipt of a sufficient Notice of Appeal for a Section 9 Administrative Hearing an independent hearing officer will be assigned. The hearing officer will schedule the appeal hearing at the earliest reasonable date. Following an evidentiary hearing, the hearing officer will render his/her decision as a recommendation before the EPC board. Pursuant to Section 1-2.35, Rules of the EPC, the EPC board will take final agency action on the findings of fact and conclusions of law of the hearing officer. A written decision will be provided by the EPC board, which affirms, reverses or modifies the hearing officer's decision. Should this final administrative decision still not be in your favor, you may seek review in accordance with Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, and the Administrative Procedure Act, Chapter 120, part II, Florida Statutes, 1961 by filing an appeal under rule 9.110 of the Florida Rules of Appellate Procedure, with the clerk of the Environmental Protection Commission, EPC Legal Department, 3629 Queen Palm Dr., Tampa, FL 33619, and filing a notice of appeal accompanied by the applicable filing fee with the Second District Court of Appeal within 30 days from the date of the final administrative decision becoming an order of the Commission.

Copies of EPC rules referenced in this Order may be examined at any EPC office, may be found on the internet site for the agency at <http://www.epchc.org> or may be obtained by written request to the EPC Legal Department at 3629 Queen Palm Dr., Tampa, FL 33619.

Revised 2/6/2013

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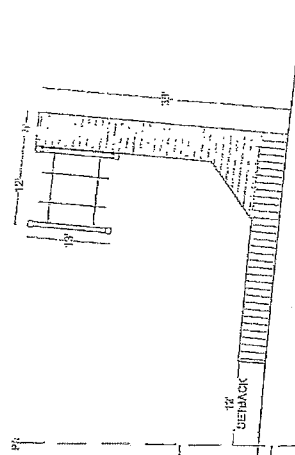
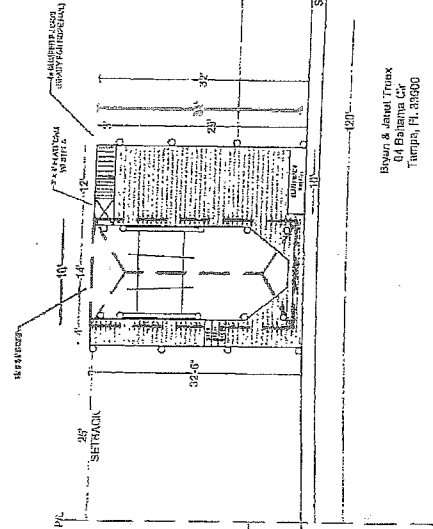
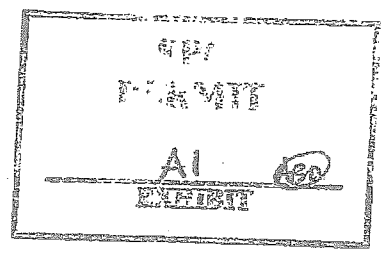


9002 W. Hillsborough Ave.  
Tampa, FL 33615  
Phone: 813-855-1672  
Email: RobinC@baydock.com

**CUSTOMER INFORMATION**

Bryan & Janet Truex  
64 Bahama Cir.  
Tampa, FL 33606

DATE  
1-3-14  
SCALE  
1" = 20'



LAPO:  
Vincent Lecavalier  
64 Bahama Cir.  
Tampa, FL 33606

Bryan & Janet Truex  
64 Bahama Cir.  
Tampa, FL 33606

RAPO:  
Brad & Monica Culpepper  
80 Bahama Cir.  
Tampa, FL 33606

**RECEIVED**

JAN 09 2014  
EPC OF H.G.  
WETLANDS

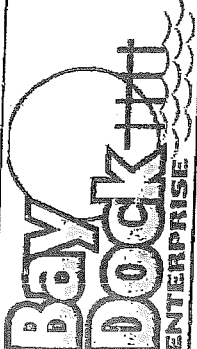
The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above

LAPO: Vincent Lecavalier  
Signature:

RAPO: Brad & Monica Culpepper  
Signature:

Date:

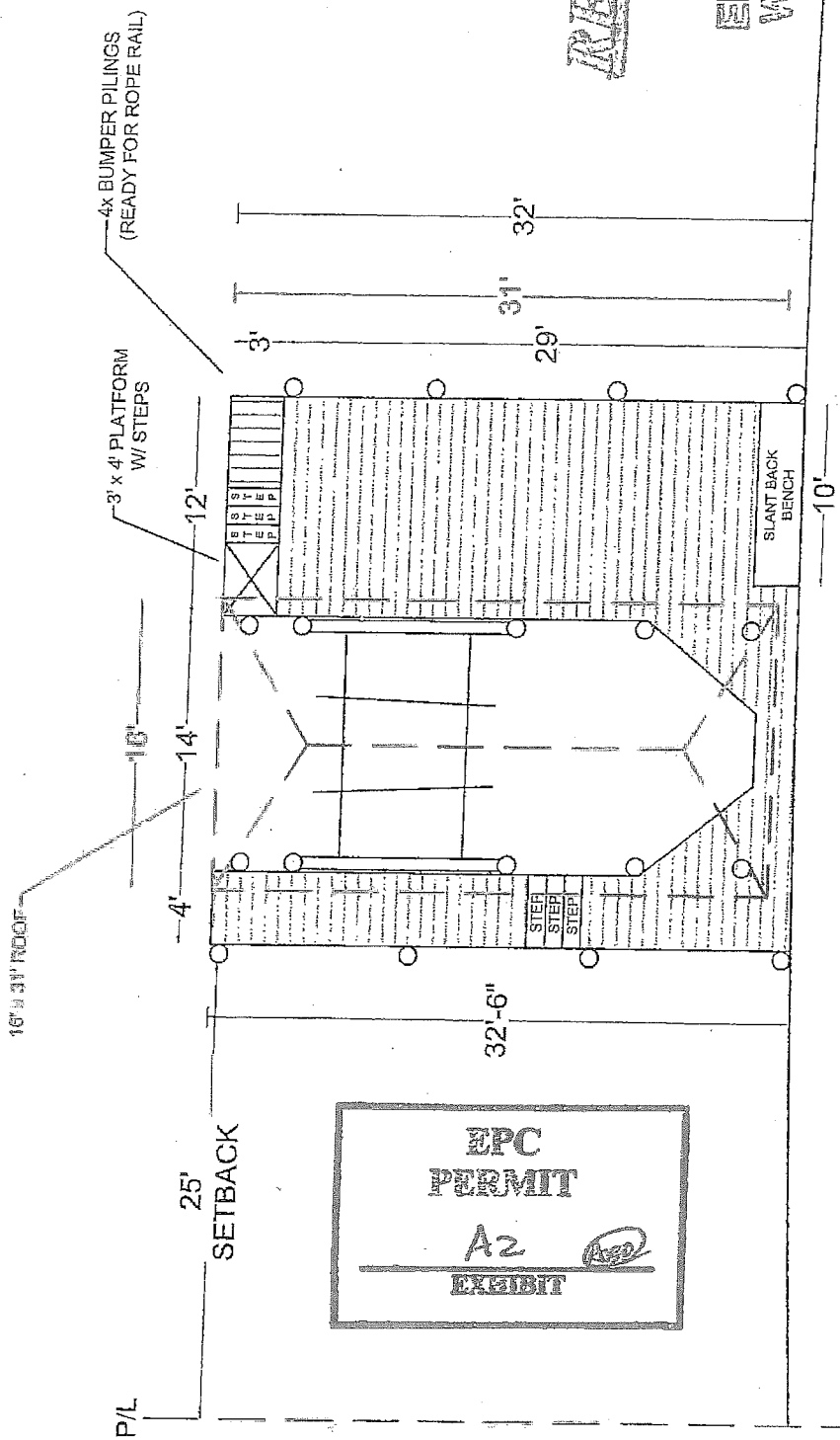
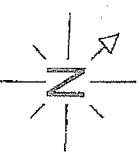
Date:



9002 W. Hillsborough Ave.  
Tampa, FL 33615  
Phone: 813-855-1672  
Email: RobinC@baydock.com

**CUSTOMER INFORMATION**  
Bryan & Janet Truex  
64 Bahama Cir  
Tampa, FL 33606

**DATE**  
1-3-14  
**SCALE**  
1"=10'



**RECEIVED**

JAN 09 2014  
EPC OF H.C.  
WETLANDS

The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above

Left Owner: Vincent Lecavalier

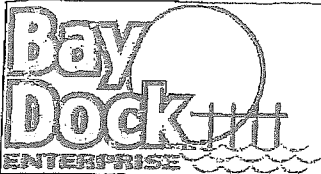
Right Owner: Brad & Monica Culpepper

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



9002 W. Hillsborough Ave.  
Tampa, FL 33615  
813-855-1672  
RobinC@baydock.com

CUSTOMER INFORMATION

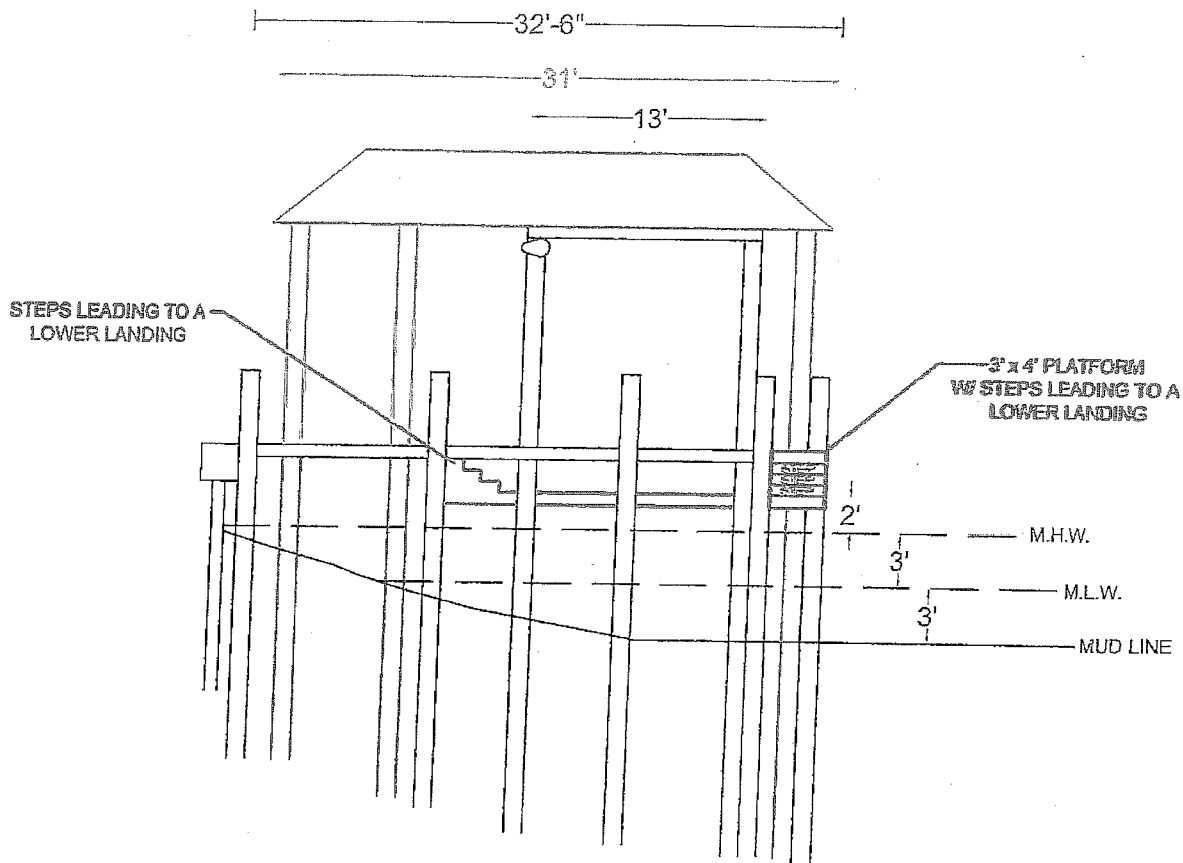
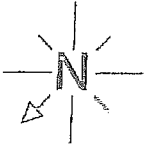
Bryan & Janet Truex  
64 Bahama  
Tampa, FL 33606

DATE

1-3-14

SCALE

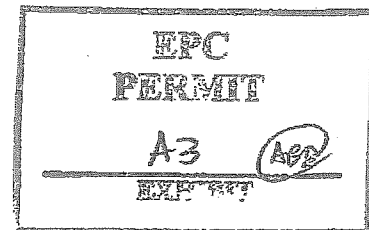
1"=10'



**RECEIVED**

JAN 09 2014

EPC OF H.C.  
WETLANDS



The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above

Left Owner: Vincent Lecavalier

Right Owner: Brad & Monica Culpepper

Signature:

Date:

Signature:

Date:

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

RANDY OGDEN and MINDY OGDEN,  
Appellants,

vs.

EPC CASE NO. 14-EPC-005

BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,  
Appellees.

---

LARRY KENT and JULIA VINCENT KENT,  
Appellants,

vs.

EPC CASE NO. 14-EPC-006

BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,  
Appellees.

---

JEFFREY WILLIS and TERI WILLIS,  
Appellants,

vs.

EPC CASE NO. 14-EPC-008

BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,

Appellees.

---



## RECOMMENDED ORDER

The final evidentiary hearing on this appeal was held on March 5<sup>th</sup> and 6<sup>th</sup>, 2015, in Tampa, Florida before Vanessa N. Cohn, Esq., assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter "EPC"). The Appellants in these consolidated appeals are Larry and Julia Kent, Randy and Mindy Ogden, and Jeffrey and Teri Willis (hereinafter collectively "Appellants"). The action under review is the EPC Executive Director's (hereinafter "Appellee Executive Director") approval of a minor work permit (the "Minor Work Permit") for the construction of a dock and associated boatlift (the "Proposed Structure") on jurisdictional surface waters (hereinafter "Sovereignty Lands" or "Jurisdictional Lands") adjacent to the Appellees, Bryan and Janet Truex's (hereinafter "Appellee Truex" or collectively with Appellee Executive Director as "Appellees" and together with the Appellants, the "Parties") real property located at 64 Bahama Circle, Tampa, Hillsborough County, Florida (hereinafter the "Truex Property"). The Appellants assert that the Appellee Executive Director erred in approving the Minor Work Permit for the construction of the Proposed Structure adjacent to the Truex Property 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. The Appellees assert that the approval issued on March 12, 2014 should be upheld based on the same act and rules.

## APPEARANCES

There was no appearance on behalf of Appellants, Larry and Julia Kent, at the evidentiary hearing in this matter.

For Appellants Randy and Mindy Ogden:

Neal A. Sivyer, Esq.  
Mahlon A. Barlow, Esq.  
Sivyer Barlow & Watson, P.A.  
SunTrust Financial Centre  
401 East Jackson Street, Suite 2225  
Tampa, Florida 3360

For Appellants Jeffrey H. Willis, Esq. and Teri Willis:

Jeffrey H. Willis, Esq.  
Willis Law Firm  
1005 North Marion Street  
Tampa, Florida 33602

For Appellee EPC Executive Director:

T. Andrew Zodrow, Esq.  
Environmental Protection  
Commission of Hillsborough County  
3629 Queen Palm Dr.  
Tampa, FL 33619

For the Applicant Bryan and Janet Truex:

Anthony J. Cuva, Esq.  
Bajo Cuva Cohen Turkel  
100 North Tampa Street, Suite 1900  
Tampa, FL 33602

Joseph T. Patsko, Esq.  
Austin, Roe & Patsko, P.A.  
2620 West Kennedy Blvd.  
Tampa, FL 33609

### STATEMENT OF THE ISSUES

The primary issue in this case is whether the proposed dock structure complies with the TPA Enabling Act and the SLM Rules. More specifically, does the proposed dock structure comply with Subsection V.A.3.a.(3), SLM Rules, wherein docks must not extend more than twenty-five percent of the navigable width of the affected water body and the maximum structure extensions of a dock can be further restricted based upon site specific circumstances regarding existing structures? In addition, whether the application should be denied where the proposed dock includes a boat slip roof that adversely affects the aesthetics of the affected water body considering the existing structures pursuant to Subsection I.C.4, SLM Rules. Finally, whether the proposed dock structure and associated roof adversely affects the Ogdens' riparian rights contrary to Section 25(f) of the TPA Enabling Act.

### STANDARD OF REVIEW

Pursuant to Section 1-2.33(d), Rules of the EPC, the administrative hearing is de novo in nature. The initial burden of proof at the administrative hearing is on the applicant to present a preliminary showing of reasonable assurances that he or she is entitled to the permit. Section 1-2.33(d), Rules of the EPC; Florida Dept. of Transp. v. J.W.C. Co. Inc., 396 So. 2d 778, 789 (Fla. 1st DCA 1981). The standard of review is whether the permit for the proposed structure provides reasonable assurance that the applicable standards will not be violated. See, Metro Dade County v. Coscan Florida, Inc., 609 So.2d 644 (Fla. 3d DCA 1992). Once that initial burden is met, the Appellants then carry the burden to demonstrate by "competent and substantial" evidence that the permit should not have been issued.

## PRELIMINARY STATEMENT

Pursuant to the Amended and Restated Interlocal Agreement between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County (the "EPC") dated June 23, 2009 (hereinafter the "TPA Delegation Agreement"), The Tampa Port Authority, d/b/a Port Tampa Bay, (hereinafter "TPA") has delegated the minor work permit portion of their Enabling Act Chapter 95-488, Laws of Florida and the Submerged Lands Management Rules adopted thereunder (hereinafter "SLM Rules") to the EPC for implementation.

On January 9, 2014, the Appellee Truex submitted to the Appellee EPC Executive Director an application for a minor work permit for the Proposed Structure on jurisdictional surface waters (hereinafter "Sovereignty Lands" or "Jurisdictional Lands") adjacent to the Truex Property. The application for the Minor Work Permit for the Proposed Structure was issued over a year ago, on March 12, 2014. The Minor Work Permit was subsequently challenged by the three Appellants pursuant to the EPC's administrative process which is applicable to this proceeding pursuant to the TPA Delegation Agreement.

As the result of the timely filing of the administrative appeals, which were subsequently consolidated, an administrative hearing was held on March 5 and 6, 2015 in Tampa, Florida. The Parties ordered a transcript of the final hearing and pursuant to the Order Setting Final hearing and Order of Pre-hearing Instructions dated September 2, 2014 the Parties were given ten (10) days from the date of filing of the transcript in which to file proposed recommended orders and argument. The transcript was filed on March 24, 2015, and the due date for proposed recommended orders was established

as April 3, 2015, which then was extended by Order of the Hearing Officer to April 17, 2015. The Parties timely filed their respective Proposed Recommended Orders.

### WITNESSES AND EXPERTISE

The Appellants Randy and Mindy Ogden (hereinafter "Appellants Ogden") called the following witnesses: Alan Deguzman; Scott Emery; Craig Kurial; Jeffrey C. Cooner, who was accepted as an expert witness as a licensed surveyor, Transcript Page Number 233, lines 3-6 hereinafter cited as (Tr. pgs. XX, lines XX); Mindy Ogden; and Kevin McNamara.

The Appellants Jeffrey H. Willis, Esq. and Teri Willis (hereinafter "Appellants Willis") called the following witness: J. Michael Shea, Esq, who was accepted as an expert witness in "navigation and the application of those rules and rules governing safe navigation." (Tr. pg. 412, lines 1-2; and Tr. pg. 416, lines 4-7).

The Appellee Executive Director called the following witnesses: Alan Deguzman, who was accepted as an expert witness in the "application of the Tampa Port Authority's Submerged Lands Management Rules and the Port's Enabling Act, Chapter 95-488, Laws of Florida." Tr. pgs. 127, lines 6-10); and Scott Emery.

The Appellee Truex called Richard Hinson, who was tendered and accepted as an expert surveyor in measuring distances (Tr. pg. 173, lines 16-22) and John Timmel, who was tendered and accepted as an expert witness in navigation. (Tr. pg. 604, line 24 – pg. 605, line 2).

## EXHIBITS

There were three joint exhibits entered into evidence, the Judicial Notice Documents, the Minor Work Permit, and the Minor Work Permit Application. The EPC Executive Director and Appellee Truexes entered 87 exhibits into evidence. The Appellants entered 12 exhibits into evidence. All parties present stipulated to the admission of all exhibits submitted at the beginning of the evidentiary hearing. (Tr. pg. 76, lines 8-13) The Appellee Executive Director further submitted into evidence as an exhibit, the copy of Alan Deguzman's resume. (Tr. pgs. 118, line 16 – pg. 121, line 22).

## FINDINGS OF FACT

1. Appellants Randy Ogden and Mindy Ogden own real property located at 174 Baltic Circle, Tampa, Florida (the "Ogden Property"). (JPHS, pg. 14).
2. Appellants Jeffrey Willis and Teri Willis own real property located at 196 Blanca Ave., Tampa, Florida (the "Willis Property"). (JPHS, pg. 15).
3. Appellant Judy Kent owns real property located at 166 Baltic Circle, Tampa, Florida (the "Kent Property"). (JPHS, pg. 15).
4. Appellees Brian Truex and Janet Truex own the Truex Property. (Tr. pg. 135, line 21).
5. The EPC is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495 (the "EPC Act"), and the rules promulgated thereunder (the "EPC Rules"). (Page 15 of the Joint Pre-hearing Stipulation of the parties dated February 2, 2015, hereinafter JPHS, pg. 15).

6. The Proposed Structure is located on the edge of a canal located on the western side of Davis Island adjacent to Hillsborough Bay in Tampa, Hillsborough County, Florida. (JPHS, pg. 15).

7. The submerged lands where the Proposed Structure is located are owned by the TPA, and as such, the submerged lands are sovereignty submerged lands and navigable waters that are subject to the SLM Rules. (JPHS, pg. 15).

8. The submerged lands where the Proposed Structure is located are classified as "Tidal Waters - Urban Jurisdictional Lands" pursuant to the SLM Rules. (JPHS, pg. 15).

9. The water body adjacent to the Truex Property is a curved shoreline located in a transitional area between the open bay and near the entry of a canal and basin. (Tr. pgs. 242, lines 13-21). The distance to the opposite shoreline, therefore, increases as one moves west towards the Bay at the location of the Proposed Structure towards the open bay, creating an ever widening band of 25% width of the navigable water body. (Tr. pg. 247, lines 6-11). The opposite shoreline is similarly situated in the transitional area but has a different curved radius. (Tr. pgs. 198, lines 15-25) (Ogden's Trial Exhibits 8 and 9).

10. The mean high water line at the subject property and along the opposite shoreline in the area is located at the seawall. (Tr. pgs. 272, lines 2-9) The shoreline or edge of the navigable waters is then the water ward edge of the seawall on the Truex Property and on the property on the opposite shoreline. (Tr. pgs. 272, lines 2-9)

11. The linear distance of the shoreline on the Truex Property is 120 feet. (Truex Trial Exhibit 18). The Proposed Structure is 964.9 square feet and is set back at

least 25 feet from the adjacent properties to meet applicable setbacks. (Truex Trial Exhibit 18).

12. Appellees Truex hired Kevin McNamara, owner of Bay Dock Enterprises, Inc. ("Bay Dock"), to assist with the permitting process and construction of the Proposed Structure. In the permitting process, Mr. McNamara submitted proposed dock plans to the EPC. To generate these plans, representatives from Bay Dock measure the width of the water body where the Proposed Structure is to be located using Google Earth (Tr. pg. 551, line 6) in accordance with the methodology approved by the TPA and EPC (Tr. pg. 80, lines 1. The methodology used by Bay Dock to measure the shortest width of the canal where the dock is located is a 90-degree angle from the seawall through point of the dock that will be closest to the opposing seawall. In this instance, that point is the southeast piling of the Truex dock. Bay Dock measured the width of the water body at 130 feet. (Tr. Pg. 567, lines 24 -25) (Tr. Pg. 568, line 1) Accordingly, Mr. McNamara applied for a permit that allowed the Truex dock to extend 25% of the width of the water body at 32.6 feet. (Tr. pg. 559, lines 16) (Ogden's Exhibit 1)

13. On January 9, 2014, the Appellee Truex submitted to the Appellee, EPC Executive Director, an application for a minor work permit for the construction of the Proposed Structure on Jurisdictional Lands adjacent to the Truex Property. (Truex Trial Exhibit 18) (Ogden's Trial Exhibit 1).

14. Upon receipt of the Truex permit application, the EPC conducted its own review of the application and the affected water body. (Tr. Pgs. 364, lines 24-25) (Tr. Pg. 365 - 367) (Tr. Pg. 117, line 10-16) (Ogden's Trial Exhibits 3 - 7). The EPC



determined that the width of the water body at that particular location was 136.23. (Tr. Pg. 180, line 21) (Tr. Pg. 110, line 13) (Ogden's Trial Exhibit 3).

15. As such, the proposed dock plan at 32.5 feet appeared to the EPC to be well within the 25% allowable maximum extension. (Tr. Pg. 110, line 13) (Ogden's Trial Exhibit 4).

16. On March 12, 2014, Appellee Executive Director issued the Minor Work Permit on behalf of the TPA to Appellee Truex for the construction of the Proposed Structure allowing for a dock extending 32.5 feet into the water body. (Ogden's Trial Exhibit 2).

17. In June 2014, after issuance of the Permit, construction of the Proposed Structure commenced and the pilings of the Proposed Structure were set in place. (TR 369, Page 13)

18. The Appellees presented evidence that the partially constructed dock currently extends 31.3 into the affected water body; however, the Proposed Structure has not been completed. (TR 563, Pg. 1)

19. The Parties have incurred significant expense in prosecuting, or defending, this appeal as well as considerable time, skill and effort. (TR 660, Pg. 1) The Appellants expenditures in this case include \$20,000.00 for a survey prepared by J. Cooner (the "Cooner Survey"). (Tr. Pg. 537, line 12)

20. The Appellants proposed the shortest distance measured in this case between the opposite shoreline and the Applicants' shoreline at the edge of the Proposed Structure where it meets the shoreline on the canal side (east side) of the Property is 118.89 feet. (Tr. pgs. 238-240; pg. 246, lines 21 – pg. 247, lines 4) If

correct, this measurement would result in a 25% maximum extension of 29.72 feet at that location. (Tr. pg. 246, lines 21 – pg. 247, lines 4) The dock structure, however, is not located at that position. Thus, no portion of the Proposed Structure will extend into the waterway along that line. In fact, all of that line extends through the riparian setback area where the Applicant is prohibited from constructing a dock under the SLM Rules. (Tr. pg. 248, lines 6-11; Truex Exhibit 21)

21. The Proposed Structure is actually located further west on the Applicant's shoreline. The distance to the opposite shoreline increases as one moves west at the location of the Proposed Structure towards the open bay, creating an ever widening band of 25% width of the navigable water body. (Tr. pg. 247, lines 6-11).

22. The Appellants' surveyor, Jeffrey Cooner, noted that the shortest distance across the water body where any portion of the Proposed Structure, the farthest piling, is located is 120.99 feet. (Ogden Exhibit 8; Truex Exhibit 48; Tr. pg. 248, lines 13-17).

23. That distance of 120.99 feet calculates to a 25% distance of 30.75 feet (30 feet, 9 inches) at that portion of the 25% band where the farthest piling is set and then that distance further increases to the west where the remaining portion of the Proposed Structure is located. (Tr. pg. 248, line 13 - pg. 249, line 9)

24. The Cooner Survey, however, attempts to establish the width of the affected water body, a fixed seawall, by finding the average of the deepest points in the channel. Any methodology that uses depth to establish the width of a water body between fixed seawalls is rejected as based on flawed methodology. (Tr. pgs. 145-146, 379, 387). Accordingly, there was no competent evidence presented by the Appellants as to the applicable measurement across the water body.

25. As part of the permitting process, EPC staff Alan Deguzman measured the distance of the affected water body to be 136.23 feet (25% maximum distance of 34.6 feet).

26. Consistent with the EPC's implementation of the SLM Rules at the time, Deguzman used a dock line analysis based on the angle of the proposed dock (Tr. pg. 113, lines 14-25, TR 113, 19-25; TR 158, 16-20) to determine the width of the water body affected by the Proposed Structure. A dock line analysis may result in different width determinations for a water body depending only on the angle of a proposed structure. (Tr. pg. 515, lines 11-18)

27. Any methodology that measures the distance across a water body considering the angle of an existing or proposed improvement, as opposed to considering the location of the improvement on the Jurisdictional Lands along the shoreline, is also rejected as faulty.

28. After this appeal was filed, in order to verify the distances measured by Bay Dock and the EPC, Truex hired Appellee's expert surveyor Richard Hinson who measured the distance across the water body at 130.2 feet for a maximum 25% distance of 32.55 feet based on measuring the distance through the then existing outermost piling at 90 degrees off the shoreline. (Tr. pg. 175, line 5 – pg. 176, line 20; Truex Exhibit 48). This is the only valid distance by any expert for any portion of the affected water body between the seawalls presented in this consolidated appeal. Moreover, as with the measurements based on the Cooner Survey advocated by the Appellants, substantially all of the Proposed Structure is actually located further west on the Applicant's

shoreline where the distance of the affected water body increases as canal opens into the Bay (Tr. pg. 248, line 13 - pg. 249, line 9; Ogden's Exhibit 9).

29. The distance between the dock on the opposite shoreline (the "Rock Dock") and the Proposed Structure is 63 feet. (Tr. pgs. 177, lines 8-18; Truex Exhibit 48)

30. Vessels entering the canal will be a suitable distance away from the edge of the shoreline based on the currently existing docks in the area so as to not present a safety hazard. (Tr. pg. 626, lines 3-21)

31. The Proposed Structure is within the appropriate dock-line (e.g. the farthest pilings) of the adjacent docks and does not present a safety hazard based on the lengths of those docks at their farthest pilings. (Tr. pg. 631, lines 11-25; pg. 632, lines 1-5)

32. Based on the significant distance to the adjacent docks to the east and west, 60 feet and 75 feet respectively, the Proposed Structure will not interfere with the navigational access to the adjacent property owners' docks. (Tr. pg. 148, lines 14-17; Tr. pg. 149, lines 2-11; Tr. pg. 369, lines 20-24)

33. The distance between the structure on the house to the east of the subject property (Lecavalier dock) and the farthest pilings of Appellants Willises' property directly across the canal is 52.4 feet. (Tr. pg. 178, lines 11-23)

34. The 52.4 feet at the next adjacent residential property represents the narrowest point (choke point) in the canal and as you travel east into the canal the available navigable area is constricted from 63 feet down to 52.4 feet. (Tr. pg. 179, lines 2-4)

35. Some residential canals on Davis Island with similarly sized vessels only have approximately 20 feet of navigational space between structures. (Tr. pg. 618, lines 11-25 and pg. 619, lines 1-11) Moreover, there are other canals on Davis Islands that are significantly narrower than the subject canal and have not presented a safe navigation concern. (Tr. pg. 369, lines. 20-25) Expert witness Dr. Scott Emery testified that after the appeal was filed, he did a site inspection which included operating a boat in the area of the Truex dock and the structure did not present any safety considerations. (Tr. pgs. 369-370)

36. Based on the significant distance across the water body, 63 feet to the nearest structure, and the fact the channel significantly narrows down to 52.4 feet to the east, the Proposed Structure will not interfere or impede navigation so as to be contrary to the public interest. (Tr. pgs. 179, lines 2-4; pg. 369, lines 20-24)

37. Expert witness testimony from Captain John Timmel indicates that the Proposed Structure will not constitute a navigational hazard and that the Proposed Structure presented "no problem whatsoever" for boaters. (Tr. pg. 605, lines 20-25; Tr. pg. 620, lines 1-12)

38. Based on Captain John Timmel's experience, the amount of vessel traffic in the area and a dockline analysis, Captain Timmel testified that the position of the Truex dock does not "create any sort of navigational issues whatsoever." (Tr. pg. 620, lines 1-12) Captain Timmel's demonstrative exhibit below clearly shows that there are no navigational concerns for two boats to safely pass in the area. (Truex Exhibit 38)

39. Mr. McNamara testified that there is more than 60 feet between the docks in the area of the Proposed Structure, and that if you had two boats with 12 foot beams

that would leave “a lot of room in there for those to pass through at the same time for those docks.” (Tr. pg. 571, lines 1-15) In fact, Mr. McNamara testified that when he was working on the Truex dock he saw boats come and go without any trouble getting through. (Tr. pg. 573, lines 3-8) Mr. McNamara testified that while he was driving the pilings for the Truex dock his barge would have been moored parallel to the end of the dock. The Truex pilings extend 31.3 feet into the canal and the beam (width) of the barge is 28 feet. Therefore, the pilings and barge would have extended 59 feet into the canal from the seawall. Mr. McNamara testified he witnessed that there was still sufficient room for boat traffic to pass with no problems –. (Tr. pg. 595, lines. 7-25; pg. 596, lines. 1-18)

40. The riparian lines established for purposes of determining the setback were not disputed in this matter. (Tr. pgs. 133, line 2 – pg. 135, line 7). The riparian lines were identified as extending almost directly straight out from the subject property boundary into the submerged lands. (Tr. pgs. 134-135, lines 14-25, and 1-7)

41. The Ogdens’ Property is located approximately 560 feet from the proposed structure. There are also eight (8) properties between the Ogdens’ property and the Appellee Truexes’ property. (Truex Trial Exhibit 52; Truex Trial Exhibit 5; Truex Trial Exhibit 21)

42. Appellant Judy Kent did not actively participate this this appeal. Moreover, the Kent Property is located approximately 559 feet from the proposed structure. There are also seven (7) properties between the Kents’ property and the Appellee Truexes’ property. (Truex Trial Exhibit 52; Truex Trial Exhibit 5; Truex Trial Exhibit 21)

43. There are sixteen (16) residential lots located within the dead end canal landward from the subject property. (Truex Trial Exhibit 52; Truex Trial Exhibit 5; Truex Trial Exhibit 21)

44. Appellant Ogdens' unobstructed view "to the channel," which is located in the cove or "cul-de-sac" behind their home, has not been impaired by the Truex dock. (Affidavit of D. Gibson – Truex Exhibit 80)

45. The Appellants' riparian lines and associated riparian rights do not extend over the submerged lands at the location of the Proposed Structure. (Tr. pg. 510, line 14 - pg. 511, lines 16; Tr. pgs. 133, line 2 – pg. 135, line 7).

46. The Proposed Structure is not located within the riparian areas adjacent to the Appellants' properties and thus will not interfere with any of their traditional riparian rights, including any alleged riparian right to an unobstructed view. (Tr. pg. 510, line 14 - pg. 511, lines 16; Tr. pgs. 133, line 2 – pg. 135, line 7) (Truex Exhibit 5)

47. Mr. McNamara estimated the cost to relocate the partially constructed Proposed Structure to be \$50,000.00 (Tr. pg. 583, lines 16)

#### CONCLUSIONS OF LAW

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

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

3. 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.

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

5. Pursuant to an EPC Final Order in the case Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011):

If a regulatory agency gives notice of intent to grant a permit application, the applicant has the initial burden at a formal administrative hearing of going forward with the presentation of a prima facie case of the applicant's entitlement to a permit. Once a prima facie case is made, the burden of going forward shifts to the party objecting to the action to present competent substantial evidence, consistent with the allegations of the petition, that the applicant is not entitled to the permit. Unless the objector presents 'contrary evidence of equivalent quality' to that presented by the applicant and agency, the permit must be approved. Rules 1-2.33(d), Rules of the EPC; Florida Dept. of Transp. v. J.W.C. Co. Inc., 396 So. 2d at 789-790.

6. The applicant's burden is "one of reasonable assurances, not absolute guarantees." Manasota-88, Inc., v. Agrico Chemical, 12 F.A.L.R. 1319, 1325 (DER 1990). The reasonable assurances must deal with reasonably foreseeable contingencies. A permit applicant is not required by Florida law to provide an "absolute guarantee" that a proposed project will not have any adverse impacts. Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011); Ginnie Spring, Inc. et al. v. Craig



Watson, et al., 1999 Fla. Div. Adm. Hear. LEXIS 5830 (DEP 1999); Save our Suwannee, Inc. v. Robert Piechocki and Dept. of Env. Protection, 18 F.A.L.R. 1467, 1472 (Fla. DEP 1996); Powell v. U.S. Navy and Dept. of Env. Protection, 15 F.A.L.R. 3386, 3394 (Fla. DEP 1993). The necessary reasonable assurance in a particular case that a proposed project will comply with applicable rules is a mixed question of fact and law that must be made, in the final analysis, by the EPC. See, e.g., Sierra Club, et al v. Department of Env. Protection, et al, 18 F.A.L.R. 2257, 2260 (Fla. DEP 1996); Save Our Suwannee, Inc. vs. Piechocki and Dept. of Env. Protection, 18 F.A.L.R. 1467, 1471 (Fla. DEP 1996); VQH Development, Inc. v. Dept. of Environmental Protection, et al, 15 F.A.L.R. 3407, 3438 (Fla. DEP 1993); Barringer, et al v. E. Speer and Associates, Inc., and Department of Environmental Regulation, 14 F.A.L.R. 3660, 3667 n. 8 (Fla. DER 1992); Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011).

7. The Appellee Truxes and the Appellee EPC Executive Director presented competent evidence that the Minor Work Permit provides reasonable assurances that the structure complies with the applicable TPA Submerged Lands Management Rules. Competent evidence, through expert witness testimony, demonstrates that the proposed dock does not constitute a navigational hazard and is substantially within 25% of the navigable width of the water body. Therefore, the burden shifted to the Appellants to present “contrary evidence of equivalent quality” that the proposed dock structure did not comply with TPA’s enabling act and adopted rules. Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011); Florida Dept. of Transp. v. J.W.C. Co., Inc., 396 So.2d at 789.

8. No third party, merely by filing petition seeking administrative hearing after an agency has indicated its intent to issue permit should be permitted to require an applicant to completely prove anew all items in application down to last detail. Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011); Florida Dept. of Transp. v. J.W.C. Co. Inc., 396 So.2d at 780. A “[p]arty seeking administrative hearing after DER has indicated intent to issue permit must identify areas of controversy and allege factual basis for contention that facts relied upon by applicant fall short of carrying reasonable assurances burden case upon the applicant.” Id. (emphasis added).

9. The Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by Appellees. The preponderance of the evidence in this matter supports the conclusion that the Minor Work Permit complies with the adopted TPA SLM Rules and the TPA Enabling Act. Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011).

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

11. To establish the distance of “twenty-five percent of the navigable width of the affected water body”, the Romano Court found that the measurement should be made across the narrowest part of the water body where the structure is proposed to be constructed. The measurement shall be made such that no part of the structure may

extend out beyond the band extending out 25% of the distance to the opposite shoreline. Subsection V.A.3.a.(3), SLM Rules

12. The above findings of facts indicate the Minor Work Permit approving the Proposed Structure was proper. The only competent measurements in the record are those of Richard Hinson, who measured the width of the affected water body at 130.2 feet.

13. Alan DeGuzman's measurement and the measurements from Appellants' expert, Jeff Cooner, are rejected because they are all predicated on faulty methodologies.

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

15. The proposed dock structure may be permitted under Subsection V.A.3.a.(3), SLM Rules, because although maximum structure extensions of a dock can be restricted based upon site specific circumstances regarding navigational safety and existing structures, the Proposed Structure does not extend out beyond the appropriate distance of the adjacent docks.

16. The facts also support the structure meets the requirements in Subsection V.A.3.a.(7), SLM Rules, wherein "[a] dock or pier must be located at the point along the riparian shoreline... which does not interfere with navigational safety or the riparian rights of adjacent property owners."

17. The Proposed Structure meets the requirement in TPA SLM Rule Subsection II.A.1., that, to qualify for the proprietary authorization to use sovereignty submerged lands through a “Consent by Rule”, the “structure or activity must not interfere with navigation.”

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

19. Section 25(f), Chapter 95-488, Tampa Port Authority Enabling Act, further states that no permit shall be issued for the proposed work unless it is found there is no impediment to navigation, there are no adverse effects on the rights of riparian owners in the area, and there is no adverse effect on public safety to the extent as to be contrary to the public interest.

20. Riparian rights are incident to the ownership of lands contiguous to and bordering on navigable waters. 5F v. Dressing, 142 So.3d 936, 940 (Fla. 2d DCA 2014), *citing*, Ferry Pass v. White's River, 48 So. 643 (Fla. 1909).

21. In Florida the common law has defined riparian rights as including the right to an unobstructed view of the Channel, an unobstructed means of ingress and egress to the Channel, including the right to erect wharves, piers, or dock, and the right to accretion and reliction. Hayes v. Bowman, 91 So. 2d 795, 804 (Fla. 1957); Freed v. Miami Beach Pier Corp., 112 So. 841, 844 (Fla. 1927); Ferry Pass Inspectors' &

Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n, 48 So. 643, 644-645

(Fla. 1909).

22. The Florida Supreme Court in the Hayes case stated:

Riparian lines do not necessarily extend into the waters according to upland boundaries nor do such rights under all conditions extend at right angles to the shore line . . . We cannot define the area within which the rights are to be enjoyed with mathematical exactitude . . . we therefore prescribe the rule that in any given case the riparian rights of an upland owner must be preserved over an area as near as practicable in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such equitable distribution' the Court necessarily must give due consideration to the lay of the upland shoreline, the direction of the Channel and the co-relative rights of adjoining upland owners." Hayes, 91 So.2d at 802

23. The riparian right of unobstructed view extends out from an upland riparian property over the submerged property defined by the established riparian lines. Hayes, at 802. For purposes of TPA submerged lands permitting, the upland riparian owner's riparian rights extend out to a distance where it meets another riparian area of another property owner or where it meets a navigable channel. *Id.* Moreover, the right to a view is a "view of the Channel," and is not an unlimited view. Hayes, at 801 ("the Court necessarily must give due consideration to the lay of the upland shore line the direction of the Channel and the co-relative rights of adjoining upland owners").

24. A management goal of the Tidal Waters – Urban Water Body classification is to minimize the aesthetic impacts of structures constructed on Jurisdictional Lands on adjacent upland properties. Subsection V.D.1.d, SLM Rules. There is, however, no substantive standard within the SLM Rules to apply aesthetics to

docking structures or other marine construction activities. Finally, the SLM Rules do not offer any guidance on how to evaluate the aesthetics. There is certainly nothing in the SLM Rules that would allow the EPC to deny a covered slip for Truex; therefore, the Appellants' argument must be rejected.

25. The Applicants have detrimentally relied on the EPC's and TPA's prior consistent implementation and application of the SLM Rules. The Applicants have incurred significant expenses in constructing their dock to this point, and it would be inequitable and unjust if the Minor Works Permit is not approved.

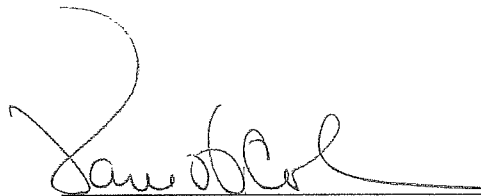
26. The Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by the Appellees as required in Section 1-2.33(d), Rules of the EPC. The preponderance of the evidence in this matter supports the conclusion that the Appellee Truexes' application for a Minor Works Permit should be approved with an amendment that the Proposed Structure not exceed the current 31.5 foot distance.

## RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order approving the Minor Works Permit for the construction of the dock and associated boat lift on Jurisdictional Lands adjacent to Appellee Bryan and Janet Truexes' property.

Respectfully submitted,

Dated: April 23, 2015



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

RANDY OGDEN and MINDY OGDEN,

Appellants,

EPC CASE NO. 14-EPC-005

vs.

BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,

Appellees.

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LARRY KENT and JULIA VINCENT KENT,

Appellants,

EPC CASE NO. 14-EPC-006

vs.

BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,

Appellees.

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JEFFREY WILLIS and TERI WILLIS,

Appellants,

EPC CASE NO. 14-EPC-008

vs.

BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,

Appellees.

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**EXCEPTIONS TO RECOMMENDED ORDER**

Appellants, Randy and Mindy Ogden (the "Ogdens"), by and through undersigned counsel and pursuant to Rule 1-2.35 EPC Rules, file exceptions to the Recommended Order dated April 23, 2015, and state:



**I. Summary:**

The Hearing Officer erred in three primary respects. First, the Hearing Officer erred in applying the law to the facts in finding that the only valid measurement of the navigable width of the channel was by the Truexes' expert, Richard Hinson, who measured 90 degrees from the Truexes' shoreline through the existing outermost piling, (RO, ¶ 28), and that the measurement of the Ogden's surveyor, Jeff Cooner, was not valid because it was based on the depth of the channel. (RO, ¶ 24). Second, the Hearing Officer's finding, without citation to the record, that the proposed structure is within the appropriate dock-line is not based on competent substantial evidence. (RO, ¶ 31). Lastly, the hearing officer erred in applying the law to the facts in finding that the Ogdens' riparian rights to an unobstructed view are not affected because their rights do not extend beyond the "cove or cul-de-sac behind their home." (RO, ¶ 44).

**II. Navigable Width Measurement:**

Measuring at a 90 degree angle from the Truexes' shoreline through the existing outermost piling does not properly measure the navigable width of the affected waterbody. The width of the affected waterbody does not have a direct relationship to the angle or curvature of the shoreline. Thus, measuring from 90 degrees from a curved shoreline, as here, is not an appropriate way to measure the navigable width of the affected waterbody. Such a methodology also does not result in the shortest distance from one seawall to other, which the Hearing Officer ruled is the appropriate way to measure the navigable width of the affected waterbody. (TR 298, 14-23). Further, the Recommended Order cites pages 145-146, 379, and 386 to discard Jeff Cooner's measurement as improperly based on the depth of the channel. Those portions of the transcript contain only a mischaracterization by the EPC's counsel in a dialogue with the Hearing

Officer and the Hearing Officer's conclusion that the depth of the canal is not relevant. Mere assertions of counsel are not competent substantial evidence to invalidate Jeff Cooner's measurement. More to the point, the evidence presented showed that Jeff Cooner's results would have been the same if taken from the centerline of the channel (Tr. 253-254, 256) and would not have been affected if a hurricane changed the depth of the channel (TR. 179, 263). Ultimately, Jeff Cooner's measurement is based on the line of navigability, which provides the only appropriate measurement of the "navigable width" of the affected waterbody.

### **III. Dock Line:**

Without record citation or reference to any evidence presented at the hearing, the Recommended Order states at paragraph 31 that the proposed structure is within the dock line. There were no exhibits or testimony presented at the hearing indicating that the proposed structure was within the relevant dock-line or that the EPC made a determination as to the location of the dock-line either before or after issuing the permit. Dr. Emery testified that the proper way to measure the dock line for the proposed dock was to average the length of the docks on both sides of the Truexes' property. (TR 334, 1-6).

The only competent substantial evidence came from Dr. Emery, Mr. DeGuzman and the the Ogdens' expert surveyor, Jeffrey Cooner, all of which contradict the Recommended Order. The EPC, through Dr. Emery, admitted that the permit allowed the southeast corner of the dock to extend "three and a half feet longer than the average between the two docks." (TR 335, 15-20). Mr. DeGuzman also testified that the average between the two docks was 29 feet, but that the permit allowed the dock to extend 32.5 feet at the southeast corner. (TR 95, 9-16). Mr. Cooner presented evidence that the proposed structure, as permitted, would extend beyond the dock line.

(TR 242, 6-10; Appellants' Exh. 8). The evidence presented supports only one finding - that the proposed dock is not consistent with the dock line on the Truexes' side of the channel.

**IV. The Covered Boat Slip and the Ogdens' Riparian Rights:**

The hearing officer erred in applying the law to the facts in finding that the Ogdens' riparian rights to an unobstructed view are not affected because their rights do not extend beyond the "cove or cul-de-sac behind their home." (RO, ¶ 44). "Owners of uplands along navigable waters enjoy common law riparian rights, one of which is the right to an unobstructed view over the water to the channel." *Lee County v. Kiesel*, 705 So. 2d 1013, 1015 (Fla. 2d DCA 1998). In *Kiesel*, the court relied on expert testimony "that eighty percent of their view to the channel was obstructed," not eighty percent of view of the channel directly adjacent to the Kiesel's property. Nothing in the *Kiesel* opinion, as applied to the facts of this case, indicates that the Ogden's right to view of the channel ends in the cove or cul-de-sac directly behind their home. The right to an unobstructed view is to over the water to the channel, not a small piece of the channel adjacent to the Ogden's house. As the competent substantial evidence showed that the proposed dock obstructs the Ogdens' view of the channel, (TR 538, 24-25; Appellants' Exh. 13), and it is undisputed that no other docks in the channel have a roof over a boat slip, (TR 520, 24-25; 521, 1-2), the proposed boat slip roof has an adverse effect on the rights of riparian owners in the area under section 25(f) of the TPA Enabling Act.

For all of these reasons, the EPC should enter a Final Order denying the Truexes' application for a permit.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail on this 3rd day of May, 2015, to the following individuals:

Vanessa Cohn (hearing officer) (via email: [vncohn@arnstein.com](mailto:vncohn@arnstein.com) and [abeene@arnstein.com](mailto:abeene@arnstein.com))

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EPC Commissioners, Les Miller (Chair), Sandy Murman, Victor Crist, Stacy White, Ken Hagen, Kevin Beckner, Al Higginbotham (via mail to 3629 Queen Palm Dr. Tampa, FL

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*/s/ Neal A. Sivyer* \_\_\_\_\_  
Attorney

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**RANDY OGDEN and MINDY OGDEN,  
Appellants,**

vs.

**EPC CASE NO. 14-EPC-005**

**BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,  
Appellees.**

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**LARRY KENT and JULIA VINCENT KENT,  
Appellants,**

vs.

**EPC CASE NO. 14-EPC-006**

**BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,  
Appellees.**

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**JEFFREY WILLIS and TERI WILLIS,  
Appellants,**

vs.

**EPC CASE NO. 14-EPC-008**

**BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,  
Appellees.**

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**EXECUTIVE DIRECTOR OF ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY'S RESPONSE TO APPELLANTS'  
RANDY AND MINDY OGDEN'S EXCEPTIONS TO RECOMMENDED ORDER**

The Executive Director of the Environmental Protection Commission of Hillsborough County ("Appellee Executive Director"), pursuant to Rule 1-2.35(b), Rules of the EPC, hereby responds to the exceptions served on May 3, 2015, by Appellants Randy and Mindy Ogden

("Ogden Appellants") and state as follows:

Upon due notice, on March 5<sup>th</sup> and 6<sup>th</sup>, 2015, a final evidentiary hearing in the above-captioned matter was held in Tampa, Florida by Vanessa N. Cohn, Esq., assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter "Commission"), on Appellants' Notices of Appeal of the Appellee Executive Director's approval of a Minor Work Permit for the construction of a dock and associated boatlift on Tampa Port Authority d/b/a Port Tampa Bay (hereinafter "TPA") owned jurisdictional surface waters (hereinafter "Sovereignty Lands") in Hillsborough County, Florida. The evidentiary hearing included the presentation of eight witnesses, admitting over a hundred exhibits and receiving post trial briefs.

On April 23, 2015, the Hearing Officer entered a Recommended Order with 47 paragraphs of Findings of Facts and 26 paragraphs of Conclusions of Law. In the Recommended Order, the Hearing Officer concluded that the preponderance of the evidence in this appeal supports the conclusion that the Minor Work Permit complies with 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. On May 3, 2015, the Ogden Appellants filed "Exceptions to the Recommended Order" (Appellant's Exceptions"). The exceptions were filed with the Commission in anticipation of a public hearing on the entry of a Final Order pursuant to Section 1-2.35, Rules of the EPC.

The appropriate scope of review of 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 Commission may reject, reverse, or modify a Hearing Officer's finding of fact *only* if it finds that the fact is not supported by substantial competent evidence in the record. The Commission 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 Commission shall not take any action which conflicts with or nullifies any provision of the EPC Act (or pursuant to the EPC/TPA Interlocal Agreement, the TPA Enabling Act), or the rules enacted pursuant to the EPC Act (or pursuant to the EPC/TPA Interlocal Agreement, the TPA Enabling Act).

The Ogden Appellants generally make three arguments alleging the Hearing Officer erred by: (1) her application of the law and Finding of Fact with respect to the measurement of the navigable width of the waterbody; (2) the Hearing Officer's Finding of Fact that the proposed structure is within the appropriate dock-line; and (3) the Hearing Officer's application of law and fact that the riparian right of view does not extend beyond the "cove or cul-de-sac behind their home."

**EXCEPTION DIRECTED TO FINDING OF FACT**  
**"NAVIGABLE WIDTH MEASUREMENT"**

On February 2, 2015, the parties submitted a Joint Pre-Hearing Stipulation in this case that included "Disputed Issues of Fact." Several of these disputed factual issues for determination by the Hearing Officer pertain to (1) Subsection V.A.3.a.(3), SLM Rules, which provides the following language: "Docks or other structures must not extend more than twenty-five percent of the navigable width of the affected waterbody" and (2) the waterbody



classification of Tidal Urban (which is applicable in this case) under Section V.D.3, SLM Rules, which provides nearly identical language:

The following standards for use supplement those in Section V.A.3, and, to the extent they are more stringent, they shall prevail:  
... (c) No dock or pier shall extend waterward of the mean or ordinary high water line more than twenty-five percent of the applicable width of the waterbody at that particular location. Maximum structure extensions can be further restricted based upon site specific circumstances regarding navigational safety and existing structures.

The agreed upon disputed issues of fact for determination by the Hearing Officer in the Pre-Hearing Stipulation relating to these two rules are identified below:

1. What is the total applicable width of the affected waterbody at the particular location where the proposed structure is permitted?
2. Whether the proposed structure will extend beyond twenty-five percent of the applicable width of the waterbody.

The Hearing Officer in the Recommended Order made Findings of Fact concerning both of these factual issues. In Finding of Fact paragraph 28, the Hearing Officer concluded that the distance across the waterbody at the particular location of the proposed structure is 130.2 feet for a 25% distance of 32.55 feet. (Tr. pg. 176, lines 4-20; Truex Trial Exhibit 47). Based on the permitted distance of 32.5 feet the Hearing Officer concluded that the proposed structure will not extend beyond twenty-five percent of the applicable width of the waterbody. (Truex Trial Exhibit 47). The distance of 130.2 feet is based on a professional survey prepared by a licensed surveyor Richard Hinson. (Truex Trial Exhibit 47). Mr. Hinson was accepted as an expert witness as “an expert surveyor in measuring distances” in the proceeding without dispute by the Appellants. (Tr. pg. 172, line 25 – pg. 173, line 22). He is qualified to measure distances and to establish the distance across a waterbody. Mr. Hinson’s testimony in this proceeding constitutes substantial

competent evidence upon which the Hearing Office relied in making her finding of Fact. (Tr. pg. 175, lines 5-12).

Again, pursuant to Section 1-2.35(e), Rules of the EPC, “[t]he Commission may reject, reverse, or modify a Hearing Officer's finding of fact *only* if it finds that the fact is not supported by substantial competent evidence in the record.” (emphasis added) The Commission has no authority to overturn the Hearing Officer’s Finding Fact paragraph 28 provided it is based on substantial competent evidence in the record. This Finding of Fact was made based on the expert witness Richard Hinson and must be upheld in this proceeding.

**EXCEPTION DIRECTED TO FINDINGS OF FACT**  
**“DOCK LINE”**

As stated above, pursuant to Section 1-2.35(e), Rules of the EPC, “[t]he Commission may reject, reverse, or modify a Hearing Officer's finding of fact *only* if it finds that the fact is not supported by substantial competent evidence in the record.” (emphasis added) Paragraph 31 of the Findings of Fact provides “‘The Proposed Structure is within the appropriate dock-line (e.g. the farthest pilings) of the adjacent docks and does not present a safety hazard based on the lengths of those docks at their farthest pilings.’ (Tr. pg. 631, lines 11-25; pg. 632, lines 1-5).” The Ogden Appellants’ exception states that the finding does not have a “record citation or reference to any evidence presented at the hearing.” The Finding of Fact clearly includes a citation to the record as noted above. The hearing testimony referenced in that record citation was presented by Captain John C. Timmell, a licensed seaman holding a unlimited chief mate's license and a 3000-gross-ton master’s license (Tr. pg. 600, lines 10-15) and who is a harbor pilot with the Tampa Bay Pilot’s Association (Tr. pg. 600, lines 24-25). Captain Timmel has

extensive experience in marine navigation and his testimony establishing the dock-line clearly constitutes competent evidence in this proceeding. Captain Timmel was accepted as an expert witness in navigation and, in fact, his expertise in that area was stipulated to by the Appellant's attorney. (Tr. pg.598, line 24 – pg. 599, line 3).

It is important to note that the dock-line is a *navigational issue* dealing with the distance out into a waterbody a structure may extend. The dock-line of existing docks along the shoreline and shape of the canal are appropriate site specific circumstances regarding navigational safety and existing structures that should be considered under Subsection V.A.3.a.(3), SLM Rules, when evaluating the distance docks may extend out into a waterbody. Medero v. EPC, (EPC Final Order, Jan. 28, 2013) Captain Timmel's testimony concerning the dock-line of existing structures along the shoreline is certainly substantial competent evidence in this matter. The Hearing Officer is the trier of fact and although two witnesses may present different testimony, the Hearing Officer's acceptance of competent evidence and the accompanying Finding of Fact in the Recommended Order may not be rejected, reversed or modified by the Commission.

**CONCLUSION OF LAW AND FINDING OF FACT**  
**"RIPARIAN RIGHT OF UNOBSTRUCTED VIEW"**

The Ogden Appellants' exception alleging the Hearing Officer erred in applying the law concerning the covered boat slip and the riparian rights is flawed and should be rejected by the Commission.

First, there was substantial competent evidence supporting the facts in the record that the riparian *lines* established for purposes of determining the setback were not disputed. (Tr. pgs. 133, line 2 – pg. 135, line 7) The riparian lines, although established for determining the setback,

were identified as extending almost directly straight out from the subject property boundary into the Sovereignty Lands. (Tr. pgs. 134-135, lines 14-25, and 1-7). In addition, it was not disputed that the Ogden Appellants' property is located approximately 560 feet from the proposed structure. There are also eight (8) properties between the Ogdens' property and the Appellee Truexes' property. (Truex Trial Exhibit 52; Truex Trial Exhibit 5; Truex Trial Exhibit 21). The Appellant Kent's Property is located approximately 559 feet from the proposed structure. There are also seven properties between the Kents' property and the Appellee Truexes' property. (Truex Trial Exhibit 52; Truex Trial Exhibit 5; Truex Trial Exhibit 21). There are sixteen (16) residential lots located within the dead end canal landward from the subject property. (Truex Trial Exhibit 52; Truex Trial Exhibit 5; Truex Trial Exhibit 21).

The expert witness Dr. Scott Emery testified that the Appellant Ogdens' own riparian rights would extend to the center of the cove or cul-de-sac. (Tr. pg. 510, lines 14-25; pg. 511, lines 1-16; Affidavit of D. Gibson – Truex Exhibit 80). Here, the Appellant Ogdens' unobstructed view "to the channel," which is located in the cove or "cul-de-sac" behind their home, has not been impaired by the Truex dock. (Affidavit of D. Gibson – Truex Exhibit 80). These are Findings of Fact based on substantial competent evidence and may not be overturned by the Commission. The Appellants' riparian lines and associated riparian rights do not extend over the Sovereignty Lands at the location of the Truex's proposed dock and associated boatlift. (Tr. pg. 510, line 14 - pg. 511, lines 16; Tr. pgs. 133, line 2 – pg. 135, line 7) Substantial competent evidence supports the Finding of Fact that the structure is not located within the riparian areas adjacent to the Appellants' properties and thus will not interfere with any of their traditional riparian rights, including any alleged riparian right to an unobstructed view over the

Sovereignty Lands. (Tr. pg. 510, line 14 - pg. 511, lines 16; Tr. pgs. 133, line 2 – pg. 135, line 7).

Second, the legal interpretation regarding the riparian lines addressed by the Hearing Officer was correct and should not be overturned. Riparian rights are incident to the ownership of lands contiguous to and bordering on navigable waters. 5F v. Dressing, 142 So.3d 936, 940 (Fla. 2d DCA 2014), *citing*, Ferry Pass v. White's River, 48 So. 643 (Fla. 1909). In Florida the common law has defined riparian rights as including the right to an unobstructed view of the Channel, an unobstructed means of ingress and egress to the Channel, including the right to erect wharves, piers, or dock, and the right to accretion and reliction. Hayes v. Bowman, 91 So. 2d 795, 804 (Fla. 1957); Freed v. Miami Beach Pier Corp., 112 So. 841, 844 (Fla. 1927); Ferry Pass Inspectors' & Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n, 48 So. 643, 644-645 (Fla. 1909).

1. The Supreme Court in the Hayes case stated:

Riparian lines do not necessarily extend into the waters according to upland boundaries nor do such rights under all conditions extend at right angles to the shore line . . . We cannot define the area within which the rights are to be enjoyed with mathematical exactitude . . . we therefore prescribe the rule that in any given case the riparian rights of an upland owner must be preserved over an area as near as practicable in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such equitable distribution' the Court necessarily must give due consideration to the lay of the upland shoreline, the direction of the Channel and the co-relative rights of adjoining upland owners." Hayes, 91 So.2d at 802

The riparian right of unobstructed view extends out from an upland riparian property over the submerged property defined by the established riparian lines. Hayes, 91 So.2d at 802. For purposes of TPA submerged lands permitting, the upland riparian owner's riparian rights extend

out to a distance where it meets a navigable channel or under the concept of equitable allocation where it meets another riparian area of another property owner. Hayes, 91 So.2d at 802. Moreover, the right to a view is a “view of the Channel,” and is not an unlimited view. Hayes, 91 So.2d at 801 (“the Court necessarily must give due consideration to the lay of the upland shore line the direction of the Channel and the co-relative rights of adjoining upland owners”).

The Ogden Appellants rely on Lee County v. Kiesel, 705 So. 2d 1013 (Fla. 2d DCA 1998) in their *Exceptions to the Recommended Order* for the assertion that the “right to an unobstructed view is to over the water to the channel, not a small piece of the channel adjacent to the Ogdens’ house.” (sic) The Lee County case specifically states, however, “in making such ‘equitable distribution’ the Court necessarily must give due consideration to the lay of the upland shore line, the direction of the Channel and the co-relative rights of adjoining upland owners.” Lee County v. Kiesel, 705 So. 2d 1013, 1015 (Fla. 2d DCA 1998). In this particular case the Ogden Appellants reside at the dead-end of a basin with numerous private lots in between the subject structure and their property. The Lee County case specifically states the Court must consider the rights of the adjoining upland owners. In fact, the Lee County case relied on facts that are very different from this case. The Court relied on the fact that “[t]he completed bridge makes landfall on *property adjacent to the Kiesel home*; none of the Kiesel’s property was condemned for the construction. The bridge is not aligned perpendicularly to the shoreline, but *extends over the river at an angle, reaching across the view from the Kiesel’s property*.” (emphasis added) Id. at 1014. The bridge presumably crossed the riparian line extending out in front of the Kiesel’s property unlike the instant case where the Ogden Appellants are 560 feet away and across eight (8) intervening lots. Had the Truex dock and associated boat lift crossed in front of the Appellant Ogdens’ property from the adjacent property (such as in the Kiesel

case), then that would likely obstruct their riparian rights, however, in this case there is no obstruction. The Hearing Officer made the correct legal interpretation that the Ogden Appellants' riparian right of unobstructed view does not extend some 560 feet down the canal and over no less than eight (8) other upland riparian owners' riparian areas.

As a matter of public policy, the Ogden Appellants' assertion that the riparian right of unobstructed view extends over some indeterminate distance, over other upland riparian owners' riparian areas, and possibly crossing marked channels or canals violates Florida case law and would result in significant litigation trying to establish how far those rights extend in each permit application. For example, does the riparian right of unobstructed view cross individual canals or even cross Tampa Bay so that any property owner may challenge a Minor Work Permit based on impairment to view in another area? The establishment of riparian lines or establishment of rights extending some 560 feet off the shoreline past eight additional lots would create an unreasonable burden on the adjacent upland riparian property owners' individual riparian rights to "wharf out" and construct docks and associated structures on Sovereignty lands. Any property owner in the area could allege that structures built on Sovereignty lands violate their riparian right to an unobstructed view over the submerged lands. This interpretation raised in Ogden Appellants' *Exceptions to the Recommended Order* would set a bad precedent and would lead to significant challenges if accepted by the Commission.

The riparian lines are those areas identified over Sovereignty lands where the upland riparian owner has traditional riparian rights. As mentioned previously, these rights include, among other rights, the right to wharf out and the right to accretion. No party disputed that the proposed dock and associated boatlift would be located outside of the Truex's own riparian area. The Appellant Ogden asserts they have the traditional riparian right of unobstructed view over

that submerged water but they do not assert the right to wharf out or accretion within the area adjacent to the Truex's upland property. The riparian right of unobstructed view only extends to where other riparian rights exist, which in the case of the Ogdens' property would be some point near the center of the cul-de-sac or basin near their property. Any other interpretation of the traditional riparian right under the Tampa Port Authority permitting would create confusion and unnecessary litigation in establishing the limits of the riparian right of unobstructed view over submerged lands.

Finally, the covered boat slip is allowed and contemplated under the TPA SLM Rules. There is no provision in the TPA SLM Rules or the TPA Enabling Act prohibiting this covered boat slip in this circumstance. The only law or rule the Ogden Appellants rely on is an allegation that the proposed boat slip roof will have an adverse effect on the rights of riparian owners in the area. As discussed above those riparian rights are not unlimited in their distance off the Ogden's property.

Respectfully submitted this 13th day of May 2015.

/s/ Andrew Zodrow  
T. Andrew Zodrow, Esq.  
Environmental Protection Commission



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 13th day of May 2015, to Assistant Counsel for the Commission, Ricardo Muratti at [murattir@epchc.org](mailto:murattir@epchc.org) and to the following:

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ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY

RANDY OGDEN and MINDY OGDEN,  
LARRY KENT and JULIA VINCENT KENT  
JEFFREY WILLIS and TERI WILLIS,

Appellants,

*Consolidated Cases:*  
EPC CASE NO. 14-EPC-005  
EPC CASE NO. 14-EPC-006  
EPC CASE NO. 14-EPC-008

vs.

BRYAN TRUEX and JANET TRUEX and  
ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,

Appellees.

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**TRUEXES' RESPONSE TO OGDENS'  
EXCEPTIONS TO RECOMMENDED ORDER**

Appellees, Bryan and Janet Truex ("Truex"), by counsel and pursuant to Rule 1-2.35 of the Rules of the Environmental Protection Commission of Hillsborough County, file this Response to Appellants' Randy and Mindy Ogden ("Ogdens") exceptions to the Recommended Order dated April 23, 2015, and state:

**I. Introduction**

After two full days of an evidentiary hearing, the presentation of nine witnesses, the admission of over a hundred exhibits and receiving post trial briefs, the Hearing Officer entered a Recommended Order which contained her findings of facts and conclusions of law. The Ogdens have taken exceptions to the Recommended Order on three grounds. The Ogdens argue that the Hearing Officer erred (1) by rejecting the Ogdens' expert witness, Jeffrey Cooner's measurement and accepting the measurement of the Truexes' expert, Richard Hinson; (2) in determining that the proposed structure is within the appropriate dock-line; and (3) in her application of the law that the riparian right of view does not extend to the Truexes' dock. The Hearing Officer

properly applied the SLM Rules and case law to the facts of this case; and her findings of fact are supported by competent substantial evidence. The Hearing Officer correctly noted that the Applicants (Truex) has the initial burden of showing of reasonable assurances that they are entitled to a permit; and once that initial burden is met, the Appellants (Ogdens) carry the burden to demonstrate by “competent and substantial” evidence that the permit should not have been issued. [Recommended Order p. 4] The Hearing Officer correctly found that the Appellees (Truex and EPC) met their burden of proof by presentation of competent evidence and the Appellants (Ogdens and Willises) failed to meet their burden of providing contrary evidence of equivalent quality to that presented by Appellees. The Hearing Officer further found that the preponderance of evidence... supports the conclusion that the Minor Work Permit complies with the SLM Rules and the TPA Enabling Act. *Id.* Accordingly, the Recommended Order should be adopted in full by the EPC.

## II. Width of the Affected Waterbody

### a. *Jeff Cooner’s Opinion was Properly Rejected*

The Hearing Officer properly rejected the opinions of the Ogdens’ expert surveyor, Cooner. Truex has extensively briefed the arguments as to why the opinions of Cooner must be rejected. [See Truex Post Trial Brief pgs. 25-29]. In short, Mr. Cooner’s width measurement is dependent upon the depth of the canal, and for this reason, the Hearing Officer correctly rejected his measurements. To determine the width of the canal, Mr. Cooner fabricated a “centerline” of the channel and then drew a line perpendicular to his “centerline” through the Truex dock to both seawalls. However, Cooner’s “centerline” is admittedly not the center or mid-point of the of the canal, that is, it is not equidistant from the seawalls. Cooner’s “centerline” was not a true midpoint between the seawalls, but was created based on an average of the deepest points in the

canal. [Tr. Pgs. 256-257, 315]. Cooner's "centerline" is actually a subjective deepwater line and is subject to move depending upon conditions thereby creating the possibility of different width measurements depending on the day the measurement was taken. Cooner's "centerline" was admittedly an ambulatory line and therefore it was subject to movement. Because the depth of the canal is subject to change, the angle or orientation of the centerline could change as well. [Tr. Pgs. 265, 314]. In turn, the width of the canal could change drastically when the angle of the centerline changed. Moreover, Cooner's "centerline" was not formulated in a written protocol, not based on scientific methodology and therefore it is not a repeatable or reliable method of measuring. Recognizing this flaw, the Hearing Officer made the factual determination that she would not accept any methodology to determine width based on depth. [Tr. Pgs. 145-146, 379, 386]. Here, it would be improper to modify the Hearing Officers' findings of fact. See section 1-2.35(e), Rules of the EPC.

*b. Method of Measurement*

The Hearing Officer properly applied the SLM Rules regarding the maximum extension of docks to the facts in this matter. The applicable rule, SLM Rules Tidal Waters – Urban V.D.3.c., states in part: “[n]o dock or pier shall extend waterward of the mean or ordinary high water line more than twenty-five percent of the applicable width of the waterbody at that particular location.” The record evidence establishes that to measure the “applicable width of the waterbody” the EPC (and formerly TPA) has consistently applied the same procedure. Specifically, the measurement identifies the point on the seawall where the proposed dock will be constructed that is closest to the opposing seawall. [Tr. Pg. 190]. One would then measure at a 90 degree angle from that point on the seawall, across the waterbody, to the opposing seawall. [Tr. Pg. 190]. That distance is the “applicable width of the waterbody.” Because this is the

procedure used by the EPC, and previously by the Tampa Port Authority, dock builders in Hillsborough County have used this method to ensure compliance with the EPC standards.

The dock builder in this case, Bay Dock Enterprises, Inc. (“Bay Dock”), used this method to determine the appropriate distance the proposed dock should extend for purposes of the permit application. [Recommended Order ¶12, p. 9] According to Bay Dock’s measurement, the width of the waterbody was 130 feet. In accord with Bay Dock’s measurements, Truex applied for a permit that would allow his dock to extend 32.5 feet ( $130 \times 25\% = 32.5$ ).

Truex’s retained a licensed surveyor, Richard Hinson, to replicate the methodology used by the EPC and dock builders in Hillsborough County to determine the applicable width the waterbody in this case. Mr. Hinson measured from the point on the Truex seawall where the proposed dock will be the closest to the opposing seawall, at a 90 degree angle, across the waterbody to the opposing seawall. [Tr. Pgs. 175-177]. Mr. Hinson calculated this distance to be 130.2 feet which would allow for a dock that extends 32.55 feet. This measurement is nearly identical to the measurement computed by Bay Dock.

Despite this evidence, the Ogdens assert that the method used to measure the applicable width is improper. However, the Ogdens have failed to provide competent evidence to support their argument. The Hearing Officer found that there was “no competent evidence” presented by the Appellants (Ogdens) as to the applicable measurement across the water body. The Hearing Officer found that the Hinson measurement of 130.2 feet “is the only valid distance... presented in the consolidated appeal.” [Recommended Order p. 12, ¶ 28] Accordingly, the Hearing Officer’s factual finding must not be overturned.

Additionally, Truex was only required to set forth evidence of “reasonable assurances” that his dock, if built in accord with the permit, would comply with SLM Rules. The Hearing

Officer properly concluded that Truex and the EPC met this initial burden. As a result, the burden then shifted to the Ogdens to show that Truex was not entitled to the permit. As explained in the EPC final order, *Romano v. City of Tampa and EPC*, (EPC Final Order, Feb. 3, 2011), and adopted in the Recommended Order:

Once a prima facie case is made, the burden of going forward shifts to the party objecting to the action to present competent substantial evidence, consistent with the allegation of the petition, that the applicant is not entitled to the permit. Unless the objector presents 'contrary evidence of equivalent quality' to that presented by the applicant and agency, the permit must be approved.

Because EPC and Truex made a prima facie case, the burden in this matter was upon the Ogdens to present competent substantial evidence of equivalent quality that Truex was not entitled to the permit. The Hearing Officer properly concluded that the Ogdens failed to meet this burden. The overwhelming evidence in this case demonstrates that Truex established the distance at the affected waterbody and that appellants failed to meet their burden.

### **III. Dock Line**

The Hearing Officer found that "the Proposed Structure is within the appropriate dock-line... of the adjacent docks and does not present a safety hazard..." [Recommended Order p. 13, ¶ 31] The Ogdens argue that the Hearing Officer's finding of fact that the Proposed Structure is within the dock-line was not supported by competent substantial evidence and is not supported by a citation to the record. Despite the Ogdens' contention, the record is replete with competent substantial evidence supporting this finding.

The dock-line is a navigational issue that is considered when determining the appropriate length that a proposed dock may extend into the water. SLM Rules V.A.3.a(3) and V.D.3.c both provide that "[m]aximum structure extensions can be further restricted based upon site specific

circumstances regarding navigational safety and existing structures.” The dockline created by the existing docks along the shoreline and the shape of the canal are appropriate site specific circumstances that can be considered under SLM Rules V.A.3.a(3) and V.D.3.c. *See Medero v. EPC*, (EPC Final Order, Jan. 28, 2013).

In this matter, Captain Timmel provided extensive testimony that supports the Hearing Officer’s finding of fact. Captain Timmel is an expert mariner – he has been a harbor pilot for 27 years, the attended a maritime academy, sailed for Exxon, grew up on boats and owned multiple recreational boats. [Tr. Pgs. 597-600]. Captain Timmel explained, “[a]nytime you navigate a vessel in or out of that canal, you’re doing a dock line analysis, a navigational dock line analysis.” [Tr. Pg. 624]. Captain Timmel generated exhibit 38-A depicting the dock line in the Truex canal with the proposed structure superimposed into the exhibit. [Tr. Pgs. 621-622; Truex Exhibit 38-A]. Using this exhibit, he explained how the proposed structure would fall within the dock line. [Tr. Pgs. 630-631].

Captain Timmel (who conducted numerous site inspections of the canal) also presented testimony using photographs to show the safety of the Truex dock because it is consistent with the surrounding dock-line. Captain Timmel provided extensive testimony explaining that navigational safety in the canal was not an issue, and stated that the proposed structure “doesn’t create any sort of navigational issues whatsoever.” [Tr. Pg. 620]. The dock pilings have been set and are present for almost a year and have not posed a navigational safety hazard. [Recommended Order p. 10, ¶ 17; Tr. pg. 372, lns. 8-11] Furthermore, Emery conducted a dockline analysis and determined that the dock in its present location does not pose a navigational safety hazard. [Tr. pgs. 369; 370-371; 382] Most importantly, as noted by the Hearing Officer the narrowest part of the canal is not behind the Truex dock (where there is 63

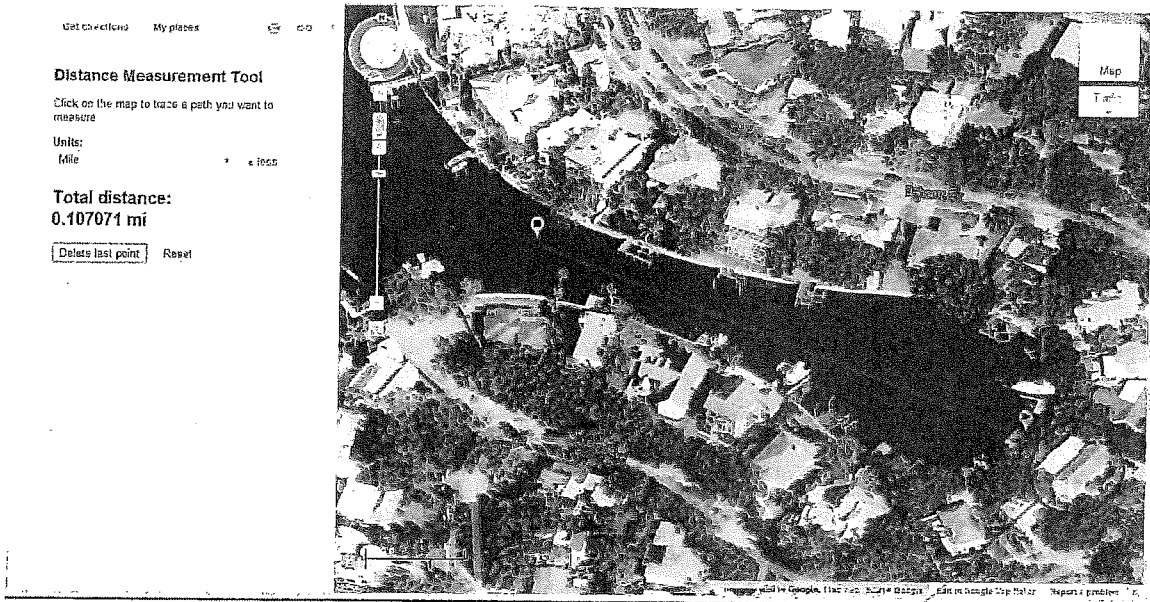
feet) but further to the east which is the “choke point” of the channel and there is 52 feet of navigational space. [Recommended Order ¶¶ 32-36] Moreover, the Hearing Officer disqualified Ogdens’ expert (Cooner) from testifying about navigation, and therefore, he could not render an opinion on the dock-line. [Tr. p. 243, lns. 3-10] Thus, the Ogdens have not presented any evidence to contradict Truex’s evidence concerning the dock-line. Accordingly, despite the Ogdens’ contention the record is replete with competent and substantial record evidence to support the fact the Truex dock is consistent with the dock-line in the canal.

Pursuant to Section 1-2.35(e), Rules of the EPC, “[t]he Commission may reject, reverse, or modify a Hearing Officer’s finding of fact *only* if it finds that the fact is not supported by substantial competent evidence in the record.” (emphasis added). Because there is competent and substantial evidence to support the Hearing Officer’s finding of fact that the proposed structure is within the appropriate dock line, this finding of fact cannot be rejected, reversed, or modified by the Commission.

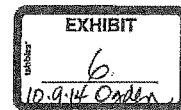
#### **IV. Riparian Rights**

As noted in Truex’s Post Trial Brief, the Ogdens live at the east end of the Channel while Truex lives at the west end of the Channel. [See Truex Exhibit 5 below]. There is no dispute that the Ogdens’ home is located more than a tenth of a mile or approximately 560 feet (almost the length of two football fields) from the Truex dock. [Recommended Order p. 15, ¶ 41]





TRUEX EXHIBIT 5



Notably, Truex is an upland riparian land owner and enjoys the riparian rights to wharf out and to have ingress and egress to his property via water. Here, Truex is merely exercising his riparian right to wharf out in compliance with the SLM Rules. The Hearing Officer made a factual finding that “the Ogden’s view to the channel which is located in the cove or “cul-de-sac” behind their home, has not been impaired by the Truex dock.” [Recommended Order p. 16, ¶144] This is factual finding is uncontroverted. The Ogdens have not presented any evidence, facts, or testimony to establish that the view to the Channel has been obstructed. However, the Ogdens take exceptions to the Hearing Officer’s application of the facts to the applicable riparian rights law that their right to an unobstructed view does not extend beyond the Channel which is located behind their home. The Florida Supreme Court has unequivocally stated that an upland riparian owner is entitled to a “direct and unobstructed view of the Channel. . . .” *Hayes v. Bowman*, 91 So. 795 (Fla. 1957). Here, the Ogden’s own expert defined the Channel as the

channel or waterway behind the Ogden's home. [See Exhibit 21 p. 4]. Ms. Ogden herself testified that she could see the Channel:

Q. I'm talking about the channel right in front of your house, this area right here. You can see that channel. Correct?

A. Yes.

[Tr. pg. 539, lns. 1-4]. In addition to the Ogdens' expert, Dr. Emery, Captain Timmel and virtually every other witness testified about the Channel running behind the Ogdens' home. Dr. Emery provided testimony that the Ogdens' riparian rights would extend to the center of the cove or cul-de-sac at the east end of the canal and over 500 feet from the Truex dock. [Tr. pg. 510, lns. 14-25; pg. 511, lns. 1-16; Affidavit of D. Gibson – Truex Ex. 80].

The Ogdens' reliance upon *Lee County v. Kiesel*, 705 So. 2d 1013 (Fla. 2d DCA 1998), is misplaced. In *Kiesel*, the Court specifically held:

to constitute a compensable<sup>1</sup> obstruction of the riparian right of view, the interference must be more than a mere annoyance. It must substantially and materially obstruct the land owner's view to the channel.

*Id.* at 1015, 1016 (citations omitted; footnote added). Here, the Ogdens presented no evidence, and cannot reasonably contend, that their view was materially and substantially obstructed by the Truex dock. Further, as addressed above, the Ogdens' riparian rights would end in the center of the cove or "cul-de-sac." [Tr. pg. 510, lns. 15-25; pg. 511, lns. 1-12]. Thus, the Truex dock does not in any way impede upon the area in which the Ogdens are entitled to an unobstructed view. It is well-established under the applicable case law that the riparian right to a view does not extend from the Ogdens' property to a distant view of the Truex dock.

The case law (which is extensively briefed in the Truex Post Trial Brief) establishes that the riparian right to a view is secondary to other riparian considerations. *See generally Hayes v.*

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<sup>1</sup> *Kiesel v. Lee County* was an inverse condemnation case against Lee County.

*Bowman*, 91 So.2d 795 (Fla. 1957)(the Court permitted the construction of an entire peninsula 2300 feet long by 270 wide to be built within view of riparian property owners); *Mickel v. Norton*, 69 So.3d 1081 (Fla. 2d DCA 2011)(the Court permitted the construction of a fence between property lines that blocked view of riparian rights owners neighbor); *Freed v. Miami Beach Pier Corp.*, 112 So. 841 (Fla. 1927)(the Court permitted the construction of a pier at an angle that was in the view of neighboring property); *O'Donnel, et. al. v. Atlantic Dry Dock Corp.*, 2005 Fla. Env. LEXIS 171 (Case No. 04-2240)(Administrative Court Recommended Order that Fla. DEP issue permit for expansion of a dry-docking facility which blocked neighboring property owners' view including view of sunset). The right to a view is a "view of the Channel," not an unlimited view. *Hayes*, 91 So.2d at 801 ("the Court necessarily must give due consideration to the lay of the upland shore line the direction of the Channel and the co-relative rights of adjoining upland owners"). Notably, the Ogdens still enjoy their right to an unobstructed view of the Channel behind their home.

*Mickel v. Norton*, 69 So.3d 1081 (Fla. 2d DCA 2011) is also dispositive on the present issue. In *Mickel*, the Mickels constructed a fence between their properties. The Mickels and Nortons were neighbors but the Norton's property faced Sunset Bay while the Mickel's property faced Alligator Bay. The Nortons sued contending that the fence violated their riparian rights by obstructing their view of the water. The Court held that the Norton's still had a "direct and unobstructed view of the Sunrise Waterway, which is the only body of water adjoining their lot." *Id.* at 1083. Furthermore, the Court held that:

At most, the Nortons established that the fence obstructed their view of the Mickels' side yard and Alligator Bay which lies to the west on the other side of the Mickel's lot. Because the Nortons' lot is not bordered by Alligator Bay, they are not entitled to the private or special riparian rights incident to the ownership of land bordered by that body of water, including the right to a view of the bay.

*Id.* at 1083. (Emphasis added). Similarly, while the Ogdens property borders the cul-de-sac behind their home, it does not border Hillsborough Bay by their own testimony and admission. Thus, in accordance with the *Mickel* case, the Ogdens are not entitled to a view of Hillsborough Bay. Rather, the Ogdens are only entitled to an unobstructed view of their Channel.

Here, the Ogdens' view is not "materially and substantially obstructed." The Ogdens still enjoy a view of their channel and Hillsborough Bay all the way to the Bayshore. Accordingly, the Hearing Officer's factual finding that the view to the Channel was not obstructed is uncontroverted and the application of the applicable riparian right law correct and must be affirmed.

**V. Conclusion**

The Hearing Officers' findings of facts were all supported by competent substantial evidence in the record. Moreover, her application of the SLM Rules and the case law to the facts of this case was proper. Despite their arguments, none of the Ogdens' exceptions warrant modification or reversal of the Recommended Order. As such, the Ogdens' exceptions should be rejected, and the Hearing Officer's Recommended Order should be adopted in full.

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*Attorneys for Bryan and Janet Truex*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 13th day of May, 2015, to the following:

Rick Muratti (via e-mail: murattir@epchc.org)  
Julia Vincent Kent (via e-mail: judyvkent@hotmail.com)  
Jeffrey H. Willis (via e-mail: jeff@willislawfirm.net and salem@willislawfirm.net)  
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/s/ Anthony J. Cuva  
\_\_\_\_\_  
Attorney

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## *ENVIRONMENTAL PROTECTION COMMISSION*

### *AGENDA ITEM COVER SHEET*

**Date of EPC Meeting:** June 18, 2015

**Subject:** Regular Agenda

Progress Report: Status of MOUs/MOAs between EPC Wetlands Management Division and Hillsborough County

**Item:** Wetlands Management Division

**Recommendations:** Accept staff progress report and MOU between EPC and Hillsborough County's Economic Development Department

**Brief Summary:** EPC's Wetland Management Division has developed a close working relationship with multiple Departments within the County over the past several years (notably Economic Development; Development Services; Parks, Recreation, and Conservation; Public Works). On May 27, 2015, a MOU between EPC and the County's Department of Economic Development on priority economic development projects was signed by Dr. Rick Garrity and Mr. Ron Barton. Currently, EPC and the County's Development Services Department are working on a MOU concerning fee adjustments to citizens for adjusted/withdrawn re-zonings and related requests.

**Financial Impact:** For the recently signed MOU with the Economic Development Department, there will be no financial impact to EPC. For the pending MOU with Development Services, there would be a reduction in fees collected by the County on behalf of EPC. In most cases, this reduction would be consistent with the reductions experienced by the County itself on a percentage basis.

#### **Background:**

EPC Wetlands Management Division staff has been coordinating with Hillsborough County's Economic Development Department (EDD) staff for almost two years in their effort to develop a set of Competitive Sites for attracting high wage employers from targeted industries. Wetland Division staff provided input to EPD for the development of the screening and ranking process leading to staff ranking of 273 sites in HC & cities into three Tier Groups. Mr. Mike Thompson has been the Wetlands Management Division's point person for this successful coordination. We have recently taken this coordination one step farther with a memorandum of Understanding (MOU) between EPC and the County's EDD (attached). This MOU commits EDD to proactively seek environmental information from EPC on Priority Economic Developments and commits EPC to provide written reports to EDD in a timely manner on these sites, as well as to commit to give applications on these sites high priority. EPC's Executive Director has the authority to enter into this MOU. The Executive Director and EPC staff are requesting the Board accept this MOU.

Mr. Thompson and Dr. Emery are now currently working with the County's Development Services Department to help streamline the review and determination of rebates/refunds to applicants for development, re-zonings, etc who have, for whatever reasons, elected to suspend, modify, or retract their application. Currently, the County collects the fees on behalf of EPC. How far into the process the applicant is when the request for rebate/refund is made plays a role in determining what percentage of the

**Memorandum of Understanding between the Environmental Protection Commission of Hillsborough County and the Hillsborough County Department of Economic Development for Priority Economic Development Projects**

Whereas, the Environmental Protection Commission of Hillsborough County (EPC) is one of several agencies involved in the Hillsborough County review and approval of site development plans and is separately involved in the regulation of activities that cause or contribute to pollution in Hillsborough County;

Whereas, the Hillsborough County Economic Development Department (HCED) as one of its functions is tasked with deeming certain development projects as Priority Economic Developments defined as projects identified by HCED and associated County municipalities that prepare and position the area for economic investment, higher wage job creation, attraction and retention in targeted industry as follows:

- Corporate Headquarters
- Financial and Shared Services
- Life Sciences
- Defense and Security
- Manufacturing

Whereas, a common goal of EPC and HCED is efficient and effective permitting for partners and applicants when proposing Priority Economic Developments projects;

Whereas, expedited reviews of Priority Economic Developments are often important for the viability of the projects;

NOW THEREFORE, EPC and HCED agree to better coordinate communication and review on these Priority Economic Developments as follows:

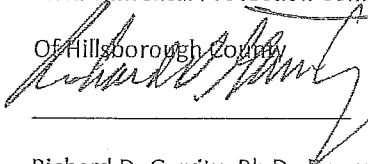
1. The HCED will proactively solicit site environmental information from the EPC as potential sites are identified. EPC will research the site for any environmental factors obtainable from EPC records that may limit the development potential of the site. Within 10 working days EPC will provide a written report of this screening.
2. Once a project is determined to be a Priority Economic Development, the HCED will communicate that designation to EPC. HCED will strongly encourage the project representatives to contact the EPC to schedule a pre-application meeting with the EPC Priority Permitting Committee to discuss environmental conditions of the site and environmental permitting requirements. The EPC will schedule such a pre-application meeting within 10 working days of the applicant's request.
3. EPC will prioritize their review of the Priority Economic Development site as applications are received.



This Agreement will take effect upon the signature of the Executive Director of the EPC and the HCED Assistant County Administrator for Economic Prosperity.

Environmental Protection Commission

Of Hillsborough County



5/27/15

Richard D. Garrity, Ph.D., Executive Director

Hillsborough County

Department of Economic Development



5/27/15

Ronald Barton, Assistant County Administrator  
for Economic Prosperity

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## *ENVIRONMENTAL PROTECTION COMMISSION*

### *AGENDA ITEM COVER SHEET*

**Date of EPC Meeting:** June 18, 2015

**Subject:** Tampa Bay Estuary Program Interlocal Agreement

**Agenda Section:** Regular Agenda

**Item:** Water Management Division

**Recommendation:** Recommend Commission approval and execution of the Tampa Bay Estuary Program Interlocal Agreement

**Brief Summary:** Presentation by Ms. Holly Greening, Executive Director of the Tampa Bay Estuary Program on the details of the updated Interlocal Agreement and the role of the EPC in this collaborative effort.

**Financial Impact:** Because EPC is not a funding entity, there is no cost to EPC to sign the Interlocal Agreement

#### **Background:**

In January 2014, the TBEP Board members identified 'becoming more independent of federal funds within 10 years' as a primary Strategic Plan goal. The TBEP Board directed staff to prepare an updated Interlocal Agreement with funding schedules reflecting the increase of dues over time to reach \$800,000 within 10 years. The Policy Board also approved two schedules for how an entity may provide dues, with and without project funds for TBERF, Cooperative Funding projects or other projects which are in the TBEP Workplan. This will be a presentation by Ms. Holly Greening, Executive Director of the Tampa Bay Estuary Program on the details of the updated Interlocal Agreement and the role of the EPC in this collaborative effort.

**List of Attachments:** None

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## *ENVIRONMENTAL PROTECTION COMMISSION*

### *AGENDA ITEM COVER SHEET*

**Date of EPC Meeting:** June 18, 2015

**Subject:** Climate Adaptation

**Agenda Section:** Regular Agenda

**Item:** Air Management Division

**Recommendation:** Staff recommendations on climate adaptation and preparedness will be followed by a request for a Board motion to approve. EPC staff recommendations will include the continuation of the EPC Climate Adaptation Workgroup with specific recommendations on passing new climate adaptation language in the Hillsborough County Local Planning Documents and the circulation of sea level rise information to County Government and other local agencies.

**Brief Summary:** This presentation is a follow-up to an August 2014 Climate Adaptation initial presentation. The Board requested EPC staff report back to the Board with Deliverables and Recommendations on Climate Adaptation and Preparedness.

**Financial Impact:** No Financial Impact

**Background:** At the August 2014 EPC Board meeting, EPC staff presented on the issue of Climate Adaptation. In addition to EPC staff, Dr. Charles Paxton, NOAA Science Operations Officer from the Ruskin Weather Station, reviewed national and local climate data. Following the presentations, the Board unanimously passed a motion for EPC to begin coordination and factual information sharing on climate issues with local agencies and stakeholders. The EPC Board also requested that EPC staff report back to the Board with Deliverables and Recommendations on how best to move forward on climate related issues. This presentation fulfills that request.

**List of Attachments:** [Double-click to list any attachments or put "None."]

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## *ENVIRONMENTAL PROTECTION COMMISSION*

### *AGENDA ITEM COVER SHEET*

**Date of EPC Meeting:** June 18, 2015

**Subject:** Employment Agreement for EPC Executive Director Services with Janet L. Dougherty

**Agenda Section:** Regular Agenda

**Item:** Legal and Administrative Services Division

**Recommendation:** Approve the Employment Agreement

**Brief Summary:** The Commissioners interviewed four finalists on May 21, 2015, and selected Janet L. Dougherty to be the next Executive Director of the EPC. The Commission also authorized the EPC Chair in coordination with the County Attorney's Office to negotiate an employment agreement with Ms. Dougherty. The proposed agreement is ready for consideration by the Commission. The agreement includes an initial two-year term and an annual base salary of \$165,000.

**Financial Impact:** The projected financial impact is approximately \$227,100 annually to be paid out of existing funds. This is comprised of salary and projected benefits, but the final amount may vary depending on the level of benefits Ms. Dougherty selects.

**Background:** The EPC Executive Director, Dr. Richard Garrity, retires June 30, 2015. The EPC Commission, the Civil Service Board, and a Commission-appointed Screening Committee conducted a thorough recruitment process to hire the next EPC Executive Director. From the original list of 56 candidates, the Commission voted on May 6, 2015, to interview 4 of the candidates. The Commissioners interviewed the four finalists on May 21, 2015, and selected Janet L. Dougherty to be the next Executive Director. At the same meeting, the Commission authorized Commissioner Miller, Chair of the EPC, in coordination with the County Attorney's Office to negotiate an employment agreement with Ms. Dougherty to be considered at this meeting. Commissioner Miller and Jennie Tarr, Chief Assistant County Attorney, met with Ms. Dougherty and her attorney to negotiate terms of the employment agreement. Language in the employment agreements from Mr. Merrill, Mr. Fletcher, and Dr. Garrity were incorporated into this agreement. The proposed agreement includes an initial two-year term and an annual base salary of \$165,000. The term of the agreement runs from July 1, 2015 through June 30, 2017.

The projected funding for this agreement is \$227,100 annually based on calculations of similar benefits provided to Dr. Garrity. This is comprised of salary (\$165,000) and projected benefits (\$62,100), but the final amount may vary depending on the level of benefits Ms. Dougherty selects. Ms. Dougherty has already executed the agreement and is prepared to start July 1, 2015.

**EMPLOYMENT AGREEMENT BETWEEN THE  
ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY  
AND JANET L. DOUGHERTY FOR SERVICES AS EXECUTIVE DIRECTOR**

**THIS EMPLOYMENT AGREEMENT** is made and entered into this 18th day of June, 2015 by and between the Environmental Protection Commission of Hillsborough County, Florida, a political subdivision of the State of Florida (hereinafter referred to as "Commission"), and Janet L. Dougherty the Environmental Director (hereinafter referred to as "Executive Director").

**WITNESSETH:**

**WHEREAS**, the Commission desires to employ the services of Janet L. Dougherty as Executive Director of the Environmental Protection Commission of Hillsborough County, Florida, as provided by Sections 5, 7, and 8 of Chapter 84-446, as amended, Laws of Florida ("Hillsborough County Environmental Protection Act" or "EPC Act"); and

**WHEREAS**, the Commission desires to provide certain benefits, to establish certain conditions of employment, and to set working conditions of the Executive Director pursuant to Sections 5, 7, and 8 of Chapter 84-446, as amended, Laws of Florida ("Hillsborough County Environmental Protection Act" or "EPC Act").

**WHEREAS**, Janet L. Dougherty desires to accept employment as Executive Director of the Environmental Protection Commission of Hillsborough County, Florida.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

**SECTION I – DUTIES**

A. The Commission hereby agrees to employ Janet L. Dougherty as the Executive Director to perform all duties normal and customary to the Position of Executive Director and all duties imposed on her in the EPC Act, Florida Statutes, other applicable laws, ordinances, and regulations, and such other proper and legally permissible duties as she may be directed to perform by the Commission.

B. The Executive Director agrees that she will at all times faithfully, industriously, and to the best of her ability, experience, and talents, perform all of the duties that may be required of and from her pursuant to the express and implicit terms of this Agreement, in a competent and professional manner, to the reasonable satisfaction of the Commission. Such duties shall be rendered in Hillsborough County, Florida, and such other place or places as the Commission shall



in good faith require, or as the interests, needs, business or opportunity of the Commission shall require.

C. The Executive Director agrees (1) to devote her full time to employment as Executive Director; (2) to faithfully perform the duties and work of the Executive Director; and (3) at all times to work in the interest and furtherance of the general business of the EPC Act.

## **SECTION II - TERM**

A. The term of this Agreement shall commence on July 1, 2015, for a period of two (2) years, concluding on June 30, 2017 pursuant to this section, subject to Sections VII and VIII. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Commission to terminate the services of the Executive Director at any time, without cause, or with cause for the reasons set forth in Section VIII (B) below, and provided that the Commission gives the Executive Director ninety (90) days' notice in writing prior to the effective date of such termination.

B. In the event the term of this Agreement expires and the Commission has not acted to enter into a new employment agreement or to remove the Executive Director, this Agreement shall remain in force, the Executive Director shall continue to perform the duties required herein and she shall be compensated as provided herein until such time as the Commission enters into a new employment agreement or removes the Executive Director.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the Executive Director to resign at any time from her position with the Commission.

D. In the event the Executive Director voluntarily resigns her position with the Commission before the expiration of the aforesaid term, then the Executive Director shall give the Commission ninety (90) days written notice in advance unless the parties otherwise agree to a term of lesser duration.

## **SECTION III – COMPENSATION**

The Commission agrees to pay the Executive Director for services rendered pursuant hereto an annual base salary of \$165,000.00 payable in installments at the same time that other employees of the Commission are paid. The Commission shall consider additional salary or benefit increases as it may deem appropriate no later than sixty (60) days after completion of the Executive Director's annual performance evaluation, which increase shall be retroactive to July 1<sup>st</sup> of the fiscal year in which it is approved. The Executive Director shall also receive the same wage increases not related to performance at the same time and in the same manner as all other unclassified managerial employees of the Commission. Any salary, benefit or wage increase

accorded the Executive Director under this section shall automatically become an amendment hereto.

#### **SECTION IV – BENEFITS**

A. The Commission shall pay for any and all premiums under its approved health insurance program(s) for medical, dental, optical, and hospitalization insurance for the Executive Director and her dependents during her employment.

B. The Commission shall pay any and all premiums under its approved program(s) of short and long term disability insurance for the Executive Director.

C. The Commission agrees to make available to the Executive Director such other benefits that are not specifically covered by or in excess of this agreement as they now exist, and may be amended from time to time, for other employees of the Commission. These benefits will include, but not be limited to cafeteria plan options and contributions to the Florida Retirement System, holidays, and any additional benefits provided for Commission employees.

#### **SECTION V – ANNUAL AND SICK LEAVE**

As of the Effective Date of this Agreement, the Executive Director shall be credited with twenty (20) days of annual leave. Thereafter, the Executive Director shall accrue and have credited to her personal account annual leave at the rate of 20 days per year. She shall accrue sick leave at the same rate as other employees of the Commission. There shall be no limitation placed on the amount of either vacation or sick leave which may be carried over from one year to the next. Upon termination of employment the Executive Director shall be paid for all unused annual leave and for 50% of all unused sick leave unless written Commission policy would provide for payment of more; *provided*, however, that Executive Director shall not be paid for any accrued but unused vacation or sick leave in the event that Executive Director is terminated pursuant to Section VIII (B).

#### **SECTION VI – SENIOR MANAGEMENT AND DEFERRED COMPENSATION**

A. The Executive Director shall participate in the Senior Management Class and Deferred Compensation of the Florida Retirement System and Social Security as provided by state and federal law.

B. In addition to the base salary paid by the Commission to the Executive Director, the Commission agrees to pay an amount equal to four percent (4%) of the Executive Director's

base salary into a Commission approved deferred compensation plan on the Executive Director's behalf but not to exceed the amount allowed by IRS regulations.

### **SECTION VII – DISABILITY**

If the Executive Director is permanently disabled or exceeds any leave permissible under the Family and Medical Leave Act, and a reasonable accommodation cannot be made, the Commission shall have the option to terminate this Agreement.

### **SECTION VIII– TERMINATION AND SEVERANCE**

A. If the Executive Director is terminated by the Commission, she shall receive upon the effective date of said termination as severance benefits a lump sum cash payment in an amount equal to twenty (20) weeks of compensation, based upon her then base salary, all accumulated annual leave, sick leave accumulated pursuant to Section IV and any other benefits afforded other employees of the Commission.

B. No severance benefits shall be paid to Executive Director if she is terminated at any time for the following reasons:

1. The Executive Director has been convicted or adjudged guilty of a felony or any serious misdemeanor involving the moral turpitude of the Executive Director,
2. The Executive Director is elected or appointed to a public office,
3. Flagrant neglect of duty.
4. Misconduct in connection with the performance of any of Executive Director's duties, including, without limitation, misappropriation of funds or property of the Commission, securing or attempting to secure personal gain in connection with any transaction entered into on behalf of the Commission, misrepresentation to the Commission, or any violation of law, including County ordinances, involving personal gain to Executive Director in conjunction with her employment.
5. Misconduct as defined in Section 215.425(4)(a)2, Fla Stat.

## **SECTION IX – PERFORMANCE EVALUATION**

The Commission shall review and evaluate the Executive Director at least annually in advance of the Executive Director's appointment anniversary date. Said review and evaluation shall be in accordance with specific criteria developed jointly by the Executive Director and the Commission. Said criteria may be added to or deleted from as the Commission may from time to time determine. Further, the Commission shall provide the Executive Director with a summary written statement of the findings and provide an adequate opportunity for the Executive Director to discuss her evaluation with the Commission.

## **SECTION X – DUES AND SUBSCRIPTIONS**

The Commission agrees to budget and to pay for all appropriate professional dues and subscriptions of the Executive Director reasonably necessary for continued and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional growth, and advancement.

## **SECTION XI – PROFESSIONAL DEVELOPMENT**

A. The Commission agrees to budget and to pay pursuant to Chapter 112, Fla. Stat, for reasonable travel and other expenses of the Executive Director for professional and official travel, meetings, and occasions adequate to continue the professional development of the Executive Director and to adequately pursue necessary official and other functions for the Commission.

B. The Commission agrees to budget and to pay pursuant to Chapter 112, Fla. Stat., for the reasonable travel and other expenses of the Executive Director for short courses, institutes and seminars that are necessary for her professional development, including but not limited to FLERA and such other national, regional, state and local government groups and committees in which the Executive Director serves as a member and for the good of the Commission.

## **SECTION XII – INDEMNIFICATION**

A. Consistent with BOCC Policy 03.04.01.05 – Reimbursement of Legal Expenses, 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, and while serving a public purpose, 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 her 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 BOCC Policy 03.04.01.05 - Reimbursement of Legal Expenses. 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 this BOCC policy. All information required by this BOCC policy must be provided prior to reimbursement.

### **SECTION XIII – OUTSIDE ACTIVITIES**

The Executive Director shall devote all of her professional or business time, attention and energies to the Commission's work and shall not, while employed by the Commission, be engaged in any other professional or business activity, regardless of whether or not such professional or business activity is pursued for gain, profit, or other pecuniary advantage; provided, however, that this provision shall not be construed as preventing the Executive Director from investing savings or other assets in such form or manner as will not require any services on her part. The Executive Director may teach or lecture as an instructor where no compensation is provided for such instruction, and may teach or lecture for compensation where such work is approved in advance, in writing, by the Commission. Nothing herein shall limit the Executive Director's right to participate in non-paid volunteer work or activities. The Executive Director shall not act against, or in conflict with, the best interest of the Commission.

### **SECTION XIV – AUTO ALLOWANCE**

The Commission agrees to pay the Executive Director an automobile allowance of Three Hundred (\$300) Dollars per month.

### **SECTION XV – EXECUTIVE DIRECTORS ACKNOWLEDGEMENT**

The Executive Director agrees that she has consulted with an attorney of her choice, had the opportunity to offer alternate terms and conditions of this Agreement and the opportunity to clarify any terms and conditions which were not understood by her. The Executive Director hereby acknowledges that she was provided this Agreement prior to its execution, and that she had the time and opportunity to review the Agreement and provided comment prior to her execution of

this Agreement. The Executive Director further acknowledges that she has read this Agreement; and by her signature below acknowledges that she fully understands and agrees to the contents, terms and conditions of this Agreement.

#### SECTION XVI – GENERAL PROVISIONS

A. The text herein shall constitute the entire Agreement between the parties and supersedes all prior discussions, agreements, commitments or understanding of every kind and nature, whether oral or written, between the Commission and Executive Director. No amendment or modification of this Agreement shall be valid or effective unless in writing and executed by the parties to this Agreement.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Executive Director.

C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

D. The failure of the Commission to exercise or otherwise act with respect to any of its rights hereunder or with respect to any other Commission employee shall not be construed as a waiver and shall not prevent the Commission from thereafter enforcing strict compliance with any and all terms hereof.

#### SECTION XVII – NOTICES

Notice pursuant to this Agreement shall be given in writing by the deposit of same in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- |                       |   |
|-----------------------|---|
| A. Commission         | Environmental Protection Commission<br>Chairperson<br>P.O. Box 1110<br>Tampa, FL 33601-1110 |
| B. Executive Director | Janet L. Dougherty<br>607 Butch Cassidy Trail<br>Wimauma, FL 33598                          |

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

**SECTION XVIII – OTHER TERMS AND CONDITIONS**

The Commission, in consultation with the Executive Director, may fix any other such terms and conditions of employment, as they may determine from time to time, relating to the performance of the Executive Director, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Charter, or any other law or ordinance.

**IN WITNESS WHEREOF**, the Commission has caused this agreement to be signed and executed on its behalf by its Chairman, and duly attested by its Clerk, and the Executive Director has signed and executed this Agreement, both in duplicate, the day and year first above written.

ATTEST: Pat Frank  
Clerk of the Circuit Court

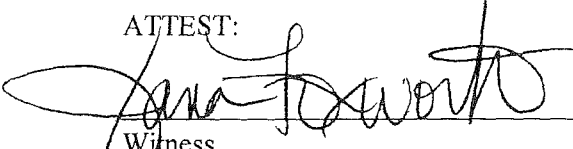
**ENVIRONMENTAL PROTECTION  
COMMISSION**

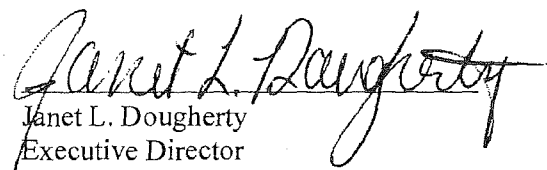
By: \_\_\_\_\_  
Deputy Clerk

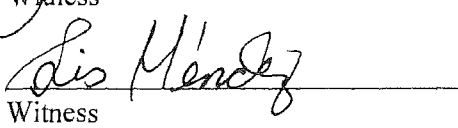
By: \_\_\_\_\_  
Lesley "Les" Miller, Jr.  
EPC Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:  
  
Witness

  
Janet L. Dougherty  
Executive Director

  
Witness

6-5-15  
Date

APPROVED AS TO LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
Jennie Granahan Tarr  
Chief Assistant County Attorney

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