

COMMISSION

Mariella Smith, *Chair*
Pat Kemp, *Vice Chair*
Harry Cohen
Ken Hagan
Gwendolyn “Gwen” W. Myers
Kimberly Overman
Stacy White



Executive Director

Janet L. Dougherty

General Counsel

Ricardo Muratti

Meeting time

9:00 a.m.

COMMISSION AGENDA

November 18, 2021

Location

Virtual meeting via communications media technology – details below

- 1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, and INVOCATION**
- 2. ROLL CALL**
- 3. CHANGES TO THE AGENDA**
- 4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, or SEPARATE VOTE**
- 5. RECOGNITIONS and PROCLAMATIONS** *(none)*
- 6. PUBLIC COMMENT** - *Each speaker is allowed 3 minutes unless the Commission directs differently. If you wish to provide public comment please submit the online [public comment form](#) at least one hour prior to the start of the meeting.*
- 7. APPROVAL OF CONSENT AGENDA**
 - Consent Agenda Items**
 - a. Approval of EPC Meeting Minutes – October 21, 2021..... 2
 - b. Monthly Activity Report FY2022 (October 2021)..... 6
 - c. Pollution Recovery Fund Budget FY2022..... 9
 - d. Legal Case Notification 11
- 8. PUBLIC HEARING**
 - a. Noise Rule Variance Request by Riverside Golf Course Community, L.L.C. in Ruskin 13
- 9. REGULAR AGENDA**
 - a. Report on Adjacent County Gypsum Stacks 25
 - b. Request the Commission Allocate Pollution Recovery Funds for Radon Study 26
 - c. Executive Director’s Report
- 10. DISCUSSION OF FUTURE AGENDA ITEMS**

ADJOURN

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.

This meeting will be available LIVE as follows: Spectrum - Channel 637, Frontier - Channel 22, Comcast - Channel 22, PC: <http://www.hcflgov.net/HTVlive>, and iOS: <http://65.49.32.149/iosvideo/ios.htm>



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.a.

Date of EPC Meeting: November 18, 2021

Subject: Approval of the October 21, 2021, EPC meeting minutes

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Approve the October 21, 2021, EPC meeting minutes.

Brief Summary: Staff requests the Commission approve the meeting minutes from the Commission meeting held on October 21, 2021.

Financial Impact: No Financial Impact

List of Attachments: Draft copy of the October 21, 2021, EPC meeting minutes.

Background: None

OCTOBER 21, 2021 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, October 21, 2021, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida, and held virtually.

The following members were present: Chair Mariella Smith and Commissioners Harry Cohen, Ken Hagan (via telephone), Gwen Myers, and Kimberly Overman.

The following members were absent: Commissioners Pat Kemp and Stacy White.

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND INVOCATION

▶ Chair Smith called the meeting to order at 9:00 a.m., led in the pledge of allegiance to the flag, and gave the invocation.

2. ROLL CALL

▶ The Deputy Clerk called the roll and noted a quorum was present.

3. CHANGES TO THE AGENDA

▶ Ms. Janet Dougherty, EPC Executive Director, reported no changes to the agenda.

4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, OR SEPARATE VOTE - ▶
None.

5. RECOGNITIONS AND PROCLAMATIONS

- Retirement recognition for Andy Schipfer, P.E. (Wetlands Division Director)

▶ Ms. Dougherty and ▶ Mr. Hooshang Boostani, former EPC employee, gave a presentation. ▶ Following comments from Mes. Kristen Schipfer-Barrett and Tina Schipfer, Mr. Schipfer made remarks. ▶ Dialogue ensued.

6. PUBLIC COMMENT - ▶ **None.**

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

- a. Approval of EPC Meeting Minutes - August 19, 2021 and September 9, 2021
- b. Monthly Activity Report Fiscal Year (FY) 2021 (September 2021)

THURSDAY, OCTOBER 21, 2021

- c. Pollution Recovery Fund Budget FY 2021
- d. Action Plans Quarterly Update
- e. Select Performance Measure Goals Quarterly Update

▶ **Commissioner Myers moved for approval, seconded by Commissioner Cohen.**
Upon roll call vote, ▶ **the motion carried five to zero.** (Commissioners Kemp and White were absent.)

8. PUBLIC HEARING - ▶ **Not addressed.**

9. REGULAR AGENDA

- a. 2021 EPC Annual Report

▶ Ms. Dougherty expounded on the report. ▶ Subsequent to dialogue, ▶ **Commissioner Myers asked if a motion to receive the EPC annual report for record was needed.** After clarification, ▶ **Commissioner Cohen seconded the motion.** Upon roll call vote, ▶ **the motion carried four to zero.** (Commissioner Hagan was out of the room; Commissioners Kemp and White were absent.)

- b. Initiation of the Executive Director's Annual Evaluation Process

▶ Attorney Beth Le, EPC, and Ms. Dougherty deferred to Ms. Elaine DeLeeuw, Director, EPC Administration Division, who spoke on the item.

- c. Executive Director's Report

▶ Ms. Dougherty and ▶ Mr. Christopher Pratt, EPC, summarized the report and ▶ answered Commissioner Cohen on the *Karenia brevis* algae bloom in the Gulf of Mexico. Chair Smith observed the November 17, 2021, public hearing to address the County's fertilizer ordinance. Dialogue occurred. ▶ Commissioner Overman pondered any correlation between wastewater/septic systems and red tide; Ms. Dougherty and Mr. Sam Elrabi, Director, EPC Water Management, responded. Talks continued. ▶ Chair Smith and Commissioner Cohen added remarks on septic impacts and septic-to-sewer conversions. ▶ Ms. Dougherty concluded the report.

10. DISCUSSION OF FUTURE AGENDA ITEMS - ▶ **None.**

THURSDAY, OCTOBER 21, 2021

ADJOURN

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

READ AND APPROVED: _____
CHAIR

ATTEST:
CINDY STUART, CLERK

By: _____
Deputy Clerk

jh

DRAFT



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.b.

Date of EPC Meeting: November 18, 2021

Subject: Agency Monthly Activity Report

Agenda Section: Consent Agenda

Division: All five EPC Divisions

Recommendation: None. Informational report.

Brief Summary: The Agency-wide report represents the total number of select divisional activities that were tracked within a specific month.

Financial Impact: No financial impact.

List of Attachments: Agency monthly report for October FY22

Background: Select data that is associated with the EPC's five core functions; outreach, monitoring, compliance and enforcement, is tracked monthly by each Division. These monthly activity reports are then tallied to generate one final Agency-wide report.

EPC STAFF ACTIVITIES - AGENCY-WIDE
Monthly Activity Report
FY22

		<u>October</u>	<u>FISCAL YEAR TO DATE</u>
A.	<u>Core Function: Citizen Support & Outreach</u>		
1	Environmental Complaints Received (see attached Divisional breakdown)		see attached
2	Number of Presentations/Outreach Events	4	4
3	Citizen Support (walk-ins, file reviews, email/letter correspondence, etc.)	307	307
B.	<u>Core Function: Air & Water Monitoring</u>		
1	Air Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	97.4%	N/A
2	Water Quality Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	98.3%	N/A
3	Number of Noise Monitoring Events	3	3
C.	<u>Core Function: Environmental Permitting</u>		
1	Permit/Authorization Applications Received	160	160
2	Applications In-house >180 days	1	N/A
3	Permits/Authorizations Issued	156	156
4	Petroleum Cleanup Cases	97	97
D.	<u>Core Function: Compliance Assurance</u>		
1	Compliance Inspections	276	276
2	Compliance Test Reviews (NOTE: Wetlands reviews included under D.1)	83	83
3	Compliance Assistance Letters Issued	138	138
4	Warning Notices Issued	12	12
E.	<u>Core Function: Enforcement</u>		
1	New Cases Initiated	0	0
2	Active Cases	64	N/A
3	Tracking Cases	45	N/A



Citizen Support & Outreach

Environmental Complaints Received for FY2022

11/10/2021 07:48 AM

Environmental Complaints Received		Oct	FY2022
Agency Total		130	169
Air Division		66	83
General		6	7
Noise		49	63
Open Burning		10	12
Pollution		1	1
Waste Division		11	16
Solid & Hazardous Waste		8	11
SQG		3	5
Water Division		22	31
Unauthorized Discharge/Disposal		9	12
Wastewater		10	16
Water Pollution/Quality		3	3
Wetlands Division		31	39
Dredge & Fill		7	11
General		3	3
Mangrove Impacts		5	6
Unauthorized Seawall/Dock		8	8
Wetland Clearing		7	10
Wetland Flooding/Drainage		1	1



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #7.c.

Date of EPC Meeting: November 18, 2021

Subject: Pollution Recovery Fund Budget

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Informational Report Only

Brief Summary: The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund.

Financial Impact: No Financial Impact

List of Attachments: PRF Budget Spreadsheet

Background: The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund (PRF). The PRF funds are generated by monetary judgments and civil settlements collected by the EPC staff. The funds are then allocated by the Commission for restoration, education, monitoring, the Artificial Reef Program, and other approved uses.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 22 POLLUTION RECOVERY FUND
10/1/2021 through 10/31/2021**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 857,373	Artificial Reef	\$ 33,338	Minimum Balance	\$ 120,000	
Interest	\$ -	Open Projects	\$ 384,246	Est. FY 22 Budget	\$ 33,338	
Deposits	\$ 19,520			Asbestos Removal	\$ 5,000	
Total	\$ 876,893	Total	\$ 417,584	Total	\$ 158,338	\$ 300,971



PROJECT		Project Amount	Project Balance
FY18 Projects			
Audubon Florida Invasive Removal	10131.102063.582990.5370.1293	\$ 50,000	\$ 9,404
TBW MacDill AFB Living Shoreline	10131.102063.582990.5370.1294	\$ 49,324	\$ 11,963
UF Small Farms For Clean Water	10131.102063.581990.5370.1295	\$ 15,750	\$ 14,269
		\$ 115,074	\$ 35,636
FY21 Projects			
TBW 2D Island Living Shoreline	10131.102063.582990.5370.1350	\$ 49,560	\$ 49,560
Eckerd College Microplastic Pollution	10131.102063.582990.5370.1351	\$ 49,450	\$ 49,450
Sun City Audubon Phase 2 Nature Trail	10131.102063.582990.5370.1352	\$ 20,000	\$ 12,000
USF Multidrug Resistant Bacteria	10131.102063.581990.5370.1353	\$ 50,000	\$ 50,000
Tampa P&R Ignacio Haya Park	10131.102063.581001.5370.1354	\$ 50,000	\$ 50,000
USF Fecal Source Detection	10131.102063.581990.5370.1355	\$ 50,000	\$ 50,000
ERI MacDill AFB Saltern Restoration	10131.102063.582990.5370.1356	\$ 37,000	\$ 37,000
ERI FWC Living Shoreline Demo Site	10131.102063.582990.5370.1357	\$ 42,000	\$ 42,000
UF/IFAS Florida Friendly Landscaping	10131.102063.581990.5370.1358	\$ 8,600	\$ 8,600
		\$ 356,610	\$ 348,610



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.d.

Date of EPC Meeting: November 18, 2021

Subject: Legal Case Notification

Agenda Section: Consent Agenda

Division: Legal Department

Recommendation: None. Informational.

Brief Summary: This notification is to assist Commissioners in identifying potential conflicts of interest that may exist and that may require disclosure prior to taking action in a quasi-judicial administrative matter. It is also intended to assist Commissioners in avoiding discussing matters with parties during administrative or civil litigation.

Financial Impact: Standard litigation costs are included in the Legal Department's operating budget, but any individual case may require a future budget amendment.

List of Attachments: None

Background: The EPC Legal Department primarily handles litigation in administrative and civil forums. A list of new litigation cases the EPC is involved in since the previous Commission meeting is provided below.

Administrative appeals (a/k/a administrative hearings, petitions, challenges, or Section 9 Appeals) involve challenges to agency actions such as permit application decisions or administrative enforcement actions (e.g. – citation or consent order). These proceedings are conducted before an appointed hearing officer who enters a recommended order after an evidentiary hearing. After the hearing officer issues the recommendation, the administrative appeal is transferred back to the Commission to render a final order. Acting in this quasi-judicial capacity, the Commission and all parties are subject to ex-parte communication restrictions. After receipt of an appeal or a request for an extension of time to file an appeal, the Commission should avoid discussing those cases. The below list of cases can assist Commissioners in identifying persons or entities that may present a conflict of interest. Certain conflicts may require the Commission to recuse themselves from voting on a final order. Please note, the Legal Department provides notice of sufficient appeals to the Commission via e-mail to assist in the conflict check process and as a reminder to limit communications; therefore, the Commission may have already received prior notification of the administrative case(s) listed below.

If the EPC becomes a party in civil litigation either through an approved Request for Authority to Initiate Litigation or by receipt of a lawsuit, the case will also be listed below. Any attorneys representing opposing party(ies) must communicate through the EPC counsel and should not contact the Commission directly. It also recommended that the Commissioners avoid discussing litigation prior to consulting with EPC counsel.

Please direct any calls or e-mails concerning administrative or civil litigation to the EPC Legal Department.

NEW LITIGATION CASES OPENED SINCE LAST EPC COMMISSION MEETING:

EPC Case No.	Date Opened	Case Type	Case Style	Division
21-EPC-010	11-03-2021	Administrative	Brian Visnovec v. EPC	Wetlands



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 8.a.

Date of EPC Meeting: November 18, 2021

Subject: Public Hearing for a Noise Variance Request by Riverside Golf Course Community, L.L.C.

Agenda Section: Public Hearing

Division: Air Division

Recommendation: EPC staff recommends that the Commission deny the variance request and authorize the Chair to issue a final order.

Brief Summary: The EPC will conduct a public hearing to consider and vote on whether Riverside Golf Course Community, L.L.C. in Ruskin, FL qualifies for a variance from Sections 1-10.03 and 1-10.04(4), Rules of the EPC, regarding the sound level limits that apply to commercial operation of lawn equipment prior to 7 a.m. Riverside asserts a substantial hardship and/or unfairness exists if they are not allowed to operate lawn care equipment on their golf course without being subject to EPC's noise pollution regulation between 5 a.m. and 7 a.m., prior to the existing 7 a.m. noise rule exemption commencing. The applicant and EPC staff will present their positions at the public hearing.

Financial Impact: No anticipated financial impact, but any subsequent litigation could require staff time.

List of Attachments: 1) Application for Variance; 2) EPC RAI; 3) Riverside's response to RAI

Background:

A. INTRODUCTION

On July 15, 2021, staff to the Environmental Protection Commission of Hillsborough County (EPC) received a Noise Pollution Rule variance application request (dated July 13, 2021) from Riverside Golf Course Community, L.L.C. (Riverside). Applicant Riverside is a limited liability company that operates a golf course on Pier Drive in Ruskin, Florida, just east of Highway 41 and adjacent to the Little Manatee River (see map below). Riverside requests that the EPC Commission grant a variance to allow their golf course business to be exempt from EPC noise regulations specific to landscaping beginning at 5 a.m. every day, as opposed to current law (7 a.m.). Riverside requests a variance to the noise regulation exemption section because they assert it is unfair and/or a substantial hardship to their business operations to comply with the 7 a.m. noise exemption commencement period. For purposes of this request, EPC staff considers landscaping to include mowing, blowing, trimming, edging, and other similar activities. This agenda item will explain the rule requirements to acquire a variance and the facts of this specific request.

RIVERSIDE GOLF COURSE, RUSKIN, HILLSBOROUGH COUNTY, FLORIDA



Riverside asks for a variance from portions of the EPC's Noise Pollution Rule (Chapter 1-10), specifically, Section 1-10.04(4), Rules of the EPC. The noise rule under consideration states as follows:

1-10.04 EXEMPTIONS

Any of the following exempt activities or sources listed in this section remain subject to any other laws, regulations, codes or ordinances. The following activities or sources are exempt from the requirements of this rule and the EPC's noise nuisance laws:

(4) Except as conditioned below, reasonable operation of equipment or conduct of activities related to residential or agricultural communities, including but not limited to, lawn care and refuse collection. **Commercial operation of motorized lawn, garden, or other outdoor maintenance equipment is exempt between the hours of 7 a.m. and 10 p.m.** (emphasis added)

It is important to note that Section 1-10.04, Rules of the EPC, creates exemptions from sound level limits that the Commission established in Section 1-10.03, Rules of the EPC. Thus, when Riverside asks for a variance from Section 1-10.04, it also means they are asking for a variance from Section 1-10.03.

B. VARIANCE PROCESS

Any person may ask the Commission for a variance or waiver to an EPC rule if they can provide adequate justification and meet the variance rule criteria. To receive a variance from the noise rule, one must apply for it pursuant to Section 1-2.50, Rules of the EPC. The EPC's variance rule states as follows:

1-2.50 REQUEST FOR VARIANCE OR WAIVER

(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to the EPC Act, where the applicant demonstrates:

- (1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and
- (2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

(b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation, as defined in Chapter 50, F.S., in the County at least 10 calendar days prior to the public hearing, and such notice shall include a summary of the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

(d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a public hearing during a Commission meeting. The Commission shall grant, in whole or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

The above rule references definitions in State law that are helpful to understand the standard to be applied. Pursuant to Section 120.542, Florida Statutes, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. The same law explains that the "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

The variance must be decided at a public hearing of the EPC Commission. The EPC Commission has not conducted a rule variance public hearing since 2014, thus staff is providing a more detailed explanation of the process herein and will explain at the hearing on November 18, 2021. The EPC variance process is relatively simple and has different procedures than the BOCC. In general, an applicant must file an application with staff that meets rule criteria. Most importantly, the applicant must explain why they qualify for a variance. The applicant must demonstrate and/or state the following:

- 1) That a substantial hardship exists or that a violation of the principles of fairness is occurring by applying the rules as they exist.
- 2) The purpose of the underlying rule can be, or has been, achieved by other means.
- 3) The rule they want a variance from cannot be a current State of Florida rule that can only be addressed by State agencies.
- 4) Specify the rule for which the variance is requested.
- 5) Explain what action is requested (e.g. – grant a variance with conditions).
- 6) The specific facts that would justify a variance.
- 7) The reasons why and the manner by which the purposes of the underlying rule would still be met (i.e. what steps are they taking to still minimize noise pollution).

The applicant must provide the above information in writing to the EPC staff. If all the basic information is provided, the parties agree upon a public hearing date. Next, the applicant must publish notice of the public hearing in a newspaper of general circulation (defined in Chapter 50, F.S.). On the day of the public hearing, the applicant can present its request to the Commission. Staff can provide information and citizens can provide public comment. After considering the various presentations, agenda backup, and staff recommendation, the Commission may discuss the merits of the request and can ask questions. After that, the Commission should vote to grant, deny, or modify the variance request. The Commission can also impose additional conditions on the applicant, if they grant the variance. Finally, staff prepares a final order memorializing the direction of the Commission and the Chair signs it.

C. RIVERSIDE'S REQUEST

Riverside has followed the procedural requirements to date. Riverside filed an application dated July 13, 2021 (see attachment #1). The application is a narrative explanation asserting why they should qualify for a variance based on a substantial hardship and/or unfairness. The EPC reviewed the application and issued a "Request for Additional Information" (RAI) on August 27, 2021 (see attachment #2). Riverside supplemented the application with responses to the RAI on September 17, 2021 (see attachment #3). On November 5, 2021, Riverside published notice of this public hearing in the Business Observer. While not required by rule, EPC staff also posted signs regarding the variance request in the community to further inform residents of the request and public hearing.

The current EPC rule exempts commercial landscaping related noises from 7 a.m. to 10 p.m. Riverside's request, if granted, would expand that regulatory exemption time two hours earlier than other commercial operators. Thus, Riverside could perform landscaping from 5 a.m. to 10 p.m. with no noise regulation oversight by the EPC. For justification for the variance, Riverside states in part

The mowing noise limitation of Chapter 1-10.04(4) has created an economic hardship and has negatively affected Riverside Golf Course Community, LLC's business as it cannot efficiently or effectively run their golf course. The mowing restriction has forced the Community to eliminate tee-times to mow their course into playable conditions in order to adhere to the current noise restriction. This, in turn, has led to loss in revenue and a reduction to the number of players due to the later tee-times. As a consequence, homeowners in the community also experience hardship as they chose to live within the community and purchased a home there with the investment-backed expectation of having the opportunity and access to play golf.

This also would violate the principles of fairness as Riverside Golf Course Community is limited in its time to mow. Section 120.542 (2) of the Florida Statutes states "For purposes of this section, 'principles of fairness' are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." The limitation on the time allotted is prejudicial to Riverside Golf Course Community. The Community only has the ability to mow before or after business hours as the grass is being used to play on during the day. Riverside Golf Course Community's business is dependent on the time the grass is mowed and the height of the grass. The 7:00 a.m. limitation does not allow the grass to be kept in a playable condition. Other similarly situated persons are not impacted the same way since they may mow throughout the day or on weekends.

Riverside provides additional arguments in its application and the response to the RAI (both attached).

D. EPC STAFF POSITION

The EPC staff does not support the variance request and recommends the Commission deny the request. Riverside incorrectly asserts that they are prohibited from landscaping prior to 7 a.m. It is important to note that the EPC's Noise Pollution Rule does not prohibit landscaping prior to 7 a.m., it just must be in compliance with applicable sound level limits.

Riverside states there is an economic hardship based on the current rule but did not provide any documentation to show the economic hardship, they just make general allegations that their operations are limited. Moreover, the EPC does not deny them the ability to mow before 7 a.m.

Riverside also argues that the time limitation on noise regulation of mowing grass is unfair because applying the rule to them affects them in a manner significantly different from the way it affects other similarly situated persons. Again, this is based on an erroneous assumption that they cannot mow before 7 a.m. In fact, in their response to the RAI, Riverside notes that it is currently mowing at 5 a.m. Moreover, the rule does not impact them differently than “similarly situation persons.” All golf courses must comply with the EPC’s rules; thus, Riverside is not impacted differently.

It should also be noted that the EPC does not have any record of noise complaints about golf course mowing from citizens in the area, nor does the EPC have record of any enforcement against Riverside for mowing noise. Riverside’s current operations have not caused citizens to contact the EPC, but there is a higher likelihood that consistent mowing at 5 a.m. will cause citizens to complain to the EPC. If the variance is granted, we could not regulate them at the early hour and thus not bring any relief to potentially impacted citizens.

Riverside also failed to provide adequate detail as to how the “underlying rule can be, or has been, achieved by other means” and similarly “the manner by which the purposes of the underlying rule would still be met.” These two related criteria in the EPC variance process mean that even though an entity may be granted a variance from the rule, they must still demonstrate how they are going to meet the intent of the rule. In this case, Riverside must demonstrate how they would reduce noise pollution from 5 a.m. to 7 a.m. They only state they “limit the use of two stroke engines (weed whackers, edgers, blowers etc...) until after 8am.” They also vaguely assert that where possible, they mow away from some homes, but do not provide sufficient details or limitations. While this is a positive step, it does not adequately explain how the noise pollution rule would be generally met even with the variance (mainly reducing mowing noises from 5 a.m. to 7 a.m.). Finally, Riverside provides no noise studies, no noise modeling, nor any supporting documentation from an acoustician or other noise expert to show how they would meet the intent of the rule.

EPC staff recommends denying the variance request, based on failure to show a substantial hardship, failure to show a violation of the principles of unfairness, and failure to show how they would otherwise meet the intent of the noise regulations. If the Commission grants the variance, it is recommended conditions be added to ensure adequate noise reductions are met.

ATTACHMENT #1

Applicant:
Riverside Golf Course Community, LLC
27777 Franklin Road Suite 200
Southfield, MI 48034
(813) 645-6000
ymoreno@suncommunities.com

July 13, 2021

The Environmental Protection Commission of Hillsborough County
3629 Queen Palm Drive
Tampa FL 33619

Riverside Golf Course Community, LLC is applying to receive a variance to Chapter 1-10.04(4) of the Rules of the Environmental Protection Commission of Hillsborough County. Chapter 1-10.04 (4) states “Commercial operation of motorized lawn, garden, or other outdoor maintenance equipment is exempt between the hours of 7 a.m. and 10 p.m.” Due to the mowing noise limitation before 7:00 a.m., Riverside Golf Course Community has incurred a substantial economic hardship and should be granted a variance to the rule to expand the start time to the exemption to 5:00 a.m. This provision from which the variance is being sought did not originate with the DEP or SWFWMD.

The Florida Statutes section 120.542(2) allows Riverside Golf Course Community, LLC to be considered to obtain a variance. Section 120.542 (2) of the Florida Statutes states:

“Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.”

The mowing noise limitation of Chapter 1-10.04(4) has created an economic hardship and has negatively affected Riverside Golf Course Community, LLC’s business as it cannot efficiently or effectively run their golf course. The mowing restriction has forced the Community to eliminate tee-times to mow their course into playable conditions in order to adhere to the current noise restriction. This, in turn,

has led to loss in revenue and a reduction to the number of players due to the later tee-times. As a consequence, homeowners in the community also experience hardship as they chose to live within the community and purchased a home there with the investment-backed expectation of having the opportunity and access to play golf.

This also would violate the principles of fairness as Riverside Golf Course Community is limited in its time to mow. Section 120.542 (2) of the Florida Statutes states “For purposes of this section, ‘principles of fairness’ are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.” The limitation on the time allotted is prejudicial to Riverside Golf Course Community. The Community only has the ability to mow before or after business hours as the grass is being used to play on during the day. Riverside Golf Course Community’s business is dependent on the time the grass is mowed and the height of the grass. The 7:00 a.m. limitation does not allow the grass to be kept in a playable condition. Other similarly situated persons are not impacted the same way since they may mow throughout the day or on weekends.

The biggest issue Riverside Golf Course Community is having with the rule is that it limits the amount of time it has to mow the course. Practically, the amount of time it has to mow is before or after business hours. It is almost impossible and dangerous to mow the grass after hours in the dark. In order to adhere to the purposes of the underlying rule, the golf course will be mowed using equipment which emits as little noise as possible to complete the task. In addition, Riverside Golf Course Community will only be mowing the golf course and not any common area or residential lawns in the community. This will allow Riverside Golf Course Community to keep any interruption to other such residents at a minimum. If Riverside Golf Course Community is allowed to commence mowing of the golf courses at 5:00 a.m., the maintenance team will have enough time to complete the course before players begin using the course.

At this time, Riverside Golf Course Community is unable to keep the grass in a well-kept playable condition. This causes Riverside Golf Course Community decreased revenue, with less available playing

time, poorer course conditions, and negatively impacts residents who purchased a home in the community with the expectation of having a reasonable opportunity to play in the morning on a well-kept surface.

If you have any questions, please feel free to reach out and I will be more than happy to assist you.

Prepared by legal counsel:

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ATTACHMENT #2

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August 27, 2021

Ryan Vatalaro, Esq.
Ryan@atlaslaw.com (sent via e-mail)
3902 N. Marguerite Street
Tampa, Florida 33603

Subject: First Request for Additional Information
Riverside Golf Course Community, L.L.C. - Variance Application
EPC Legal Case No. 21-EPC-009

Dear Mr. Vatalaro,

The Environmental Protection Commission of Hillsborough County (EPC) is in receipt of your client's variance application request dated July 13, 2021 and received by the EPC on July 15, 2021. Riverside Golf Course Community, L.L.C. (Riverside GC or Applicant) has requested that the EPC Commission grant Riverside GC a variance to allow it to perform landscaping exempt from EPC noise regulations beginning at 5 a.m. Section 1-10.04(4), Rules of the EPC, the noise rule under consideration states as follows:

1-10.04 EXEMPTIONS

Any of the following exempt activities or sources listed in this section remain subject to any other laws, regulations, codes or ordinances. The following activities or sources are exempt from the requirements of this rule and the EPC's noise nuisance laws: (4) Except as conditioned below, reasonable operation of equipment or conduct of activities related to residential or agricultural communities, including but not limited to, lawn care and refuse collection. Commercial operation of motorized lawn, garden, or other outdoor maintenance equipment is exempt between the hours of 7 a.m. and 10 p.m.

We want to make sure you are aware that the EPC does not prohibit landscaping prior to 7 a.m., the activity just must be in compliance with applicable noise rules prior to 7 a.m. The current rule exempts EPC noise regulation of commercial landscaping related noises from 7 a.m. to 10 p.m. Thus, Riverside GC's request, if granted, would expand that regulatory exemption time two hours early (5 a.m. to 10 p.m.). Please also note that Hillsborough County (a different government entity) has a separate noise ordinance that you may still have to comply with even if you obtain an EPC variance.

For purposes of this request for additional information (RAI), the term landscaping includes mowing, blowing, trimming, and other similar activities. EPC staff have reviewed the application and request that the Applicant respond to the following RAI questions within the next 45 days.

1. Please provide details as to how you operate your landscaping. For example:
 - a) what hours does Riverside GC normally landscape in the summer months?
 - b) what hours does Riverside GC normally landscape in the winter months?

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- c) what equipment do you use for mowing?
 - d) do you mow while golfers are using the course, but not near them?
2. How has the EPC rule created an economic hardship, if the rule does not prohibit landscaping prior to 7 a.m.?
 3. What measures does Riverside GC currently take to reduce noise from landscaping activities?
 4. Does Riverside GC use a contractor or its own staff for routine landscaping?
 5. Does Riverside GC landscape further away from residences in the early hours and then work its way closer to residences later in the morning?
 6. Can Riverside GC landscape later in the evening (before dark) during the summer months, as opposed to early in the morning?
 7. The application states, "In order to adhere to the purposes of the underlying rule, the golf course will be mowed using equipment which emits as little noise as possible to complete the task." Please provide more detail as to the equipment that will be utilized to emit as little noise as possible, when compared to conventional golf course maintenance equipment.
 8. How is this a fairness issue, when all golf courses must comply with the same rule?
 9. Has Riverside GC received any noise complaints from any residence regarding early morning landscaping?
 10. The EPC is not aware of any current noise complaints regarding Riverside GC landscaping. Has Riverside GC ever been the recipient of a request from the EPC to reduce its landscaping noise?
 11. Has any other government entity asked Riverside GC to reduce its landscaping noise?
 12. Has Riverside GC participated in any community outreach events regarding landscaping noise?
 13. Will Riverside CG join the EPC in community outreach events, if the EPC initiates a meeting (presumably virtual) during this variance process?
 14. Have you conducted any sound studies or noise modeling of the landscaping noise in the community?
 15. Have you retained an acoustician or engineer to assist with noise abatement?
 16. Are you aware of any other golf courses in Hillsborough County that landscape prior to 7 a.m.?
 17. You have stated in your application that you "are not impacted the same way since they may mow throughout the day or on weekends". Please specifically explain what limits your ability to operate in the same manner as other similar operations in Hillsborough County.

Once the EPC receives adequate response to these questions, we will then explore an appropriate Commission public hearing date to consider your request. As a reminder, once a date is agreed to, the Applicant is responsible for noticing the public hearing in a newspaper of general circulation in Hillsborough County, Florida for a minimum of one day so as to provide constructive notice to potentially aggrieved parties. If the response to this RAI is inadequate and/or raise more questions, we may send a second RAI.

If you have any questions or would like to discuss, I can be reached at 813-627-2600 x 1058.

Regards,

/s/ Rick Muratti

Rick Muratti
General Counsel, EPC

ATTACHMENT #3
Riverside Response to RAI 9/17/21

For purposes of this request for additional information (RAI), the term landscaping includes mowing, blowing, trimming, and other similar activities. EPC staff have reviewed the application and request that the Applicant respond to the following RAI questions within the next 45 days.

1. Please provide details as to how you operate your landscaping. For example:

a) what hours does Riverside GC normally landscape in the summer months?

05:00 – 14:00

b) what hours does Riverside GC normally landscape in the winter months?

05:00 – 14:00

c) what equipment do you use for mowing?

Fairway units, Rough units, Triplex for tees and greens.

d) do you mow while golfers are using the course, but not near them?

Yes, We mow throughout the day.

2. How has the EPC rule created an economic hardship, if the rule does not prohibit landscaping prior to 7 a.m.?

It limits our ability to be business ready by 06:45am as we are unable to mow greens and tees before golfers get out.

3. What measures does Riverside GC currently take to reduce noise from landscaping activities?

We limit the use of two stroke engines (weed whackers, edgers, blowers etc...) until after 8am.

4. Does Riverside GC use a contractor or its own staff for routine landscaping?

We use a contractor. IGM (international Golf Maintenance)

5. Does Riverside GC landscape further away from residences in the early hours and then work its way closer to residences later in the morning?

Where possible, yes.

6. Can Riverside GC landscape later in the evening (before dark) during the summer months, as opposed to early in the morning?

No, this is not feasible for business.

7. The application states, "In order to adhere to the purposes of the underlying rule, the golf course will be mowed using equipment which emits as little noise as possible to complete the task." Please provide more detail as to the equipment that will be utilized to emit as little noise as possible, when compared to conventional golf course maintenance equipment.

Smaller handheld equipment may be used earlier in the morning, especially in certain areas and closer to residences.

8. How is this a fairness issue, when all golf courses must comply with the same rule?

No other golf courses in this jurisdiction limit mowing before 7am. The Applicant is seeking a variance in good-faith, instead of ignoring the rule as others do. The noise rule applies to all persons in the jurisdiction. When considering fairness, EPC staff should consider whether this rule impacts all persons equally, not just all golf courses. The EPC has enacted a rule about mowing early in the morning. As compared to other residents or businesses, this rule has a disproportionate impact on the Applicant's business which relies on short grass and being open early.

9. Has Riverside GC received any noise complaints from any residence regarding early morning landscaping?

Yes, of the 728 sites, only one has complained. This resident resides near the Putting Green near the pro-shop parking lot. Many golfers begin putting practice as early as 7 AM before their tee time so this is an area that must be mowed earlier in the day.

10. The EPC is not aware of any current noise complaints regarding Riverside GC landscaping. Has Riverside GC ever been the recipient of a request from the EPC to reduce its landscaping noise?

No.

11. Has any other government entity asked Riverside GC to reduce its landscaping noise?

No.

12. Has Riverside GC participated in any community outreach events regarding landscaping noise?

No. Noise has never been an issue at RSC.

13. Will Riverside CG join the EPC in community outreach events, if the EPC initiates a meeting (presumably virtual) during this variance process?

Yes.

14. Have you conducted any sound studies or noise modeling of the landscaping noise in the community?

No.

15. Have you retained an acoustician or engineer to assist with noise abatement?

No.

16. Are you aware of any other golf courses in Hillsborough County that landscape prior to 7 a.m.?

All golf courses in the Hillsborough County area mow before 7 AM.

17. You have stated in your application that you "are not impacted the same way since they may mow throughout the day or on weekends". Please specifically explain what limits your ability to operate in the same manner as other similar operations in Hillsborough County.

We have play throughout the day and on weekends as well just like weekdays. Mowing in the mornings is our only option to not interrupt play and generate revenue for our GC.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.a.

Date of EPC Meeting: November 18, 2021

Subject: Adjacent County Gypsum Stacks

Agenda Section: Regular Agenda

Division: Water Division

Recommendation: Informational Report

Brief Summary: This item is a continuation of the discussions on phosphogypsum stacks, but this time we are providing a briefing on gypsum stacks in adjacent Counties.

Financial Impact: No Financial Impact

List of Attachments: None

Background: In the September meeting there was a request for information on the location of phosphogypsum stacks in adjacent Counties and a briefing on which may have the potential to impact our County. EPC staff's presentation will show the location of all the gypsum stacks in adjacent counties, the status of their operations, and which have permitted discharges ultimately to the Hillsborough County watershed.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.b.

Date of EPC Meeting: November 18, 2021

Subject: Request the Commission allocate Pollution Recovery Funds for Radon Study

Agenda Section: Regular Agenda

Division: Air Division

Recommendation: Approve the use of Pollution Recovery Funds (PRF) for EPC staff to pay for a follow up radon study on Mosaic Fertilizer's gypsum stacks in Riverview. In conjunction, staff requests the Commission authorize the EPC Chair to enter into an agreement with the Florida Department of Health to receive a portion of the PRF funds for their work.

Brief Summary: Several years ago staff conducted a study to determine if the surface dust and radiation from Mosaic's Riverview gypsum stacks were negatively impacting surrounding schools and nearby residents. At the September 2021 EPC meeting staff was directed to conduct a follow up study to ensure there has been no change in the gypsum stacks' emissions. This agenda item propose to use Pollution Recovery Fund monies to fund the study and also pay the Florida Department of Health.

Financial Impact: Financial Impact to the Pollution Recovery Fund is \$35,000 to be paid out of existing funds.

List of Attachments: None

Background: Between 2003 and 2013, in response to a Development of Regional Impact (DRI) requirement, EPC staff coordinated with Mosaic Fertilizer, LLC and the Florida Department of Health to conduct dust and radon monitoring of the Mosaic gypsum stack in Riverview. The study results indicated there were no elevated readings at any of the schools or nearby communities. During the September 2021 EPC meeting, the Commission requested a follow up study be conducted to verify that the radiation and dust emission levels have not changed. At the October EPC meeting, the EPC Executive Director, Ms. Dougherty, informed the Commission that the Health Dept. was willing to conduct a follow up study and that EPC staff was exploring funding options. Ms. Dougherty also provided a preliminary cost estimate.

Staff will present a summary overview of their work thus far and request Pollution Recovery Fund (PRF) monies be used to fund the follow up study. The PRF funds will be used to pay the Department of Health \$21,000 for their costs, with the remaining balance used to offset EPC's air monitoring expenses. Therefore, staff recommends the Commission approve staff's use of \$35,000 from the Pollution Recovery Fund to pay for the follow up study. In conjunction, staff requests the Commission authorize the EPC Chair to enter into an agreement with the Florida Department of Health to receive PRF funds for their work. The Chair would also be authorized to make any future non-substantive amendments to the PRF agreement (e.g. – extensions) without further action by the Commission.