

COMMISSION

Joshua Wostal, *Chair*
Harry Cohen, *Vice Chair*
Donna Cameron Cepeda
Ken Hagan
Pat Kemp
Gwendolyn “Gwen” W. Myers
Michael Owen



Executive Director

Janet D. Lorton

General Counsel

Ricardo Muratti

Location

In Person attendance: 601 E. Kennedy Blvd., Tampa
BOCC Boardroom, County Center, 2nd Floor
Virtual attendance: see details below

Meeting time
9:00 a.m.

COMMISSION AGENDA
January 12, 2023

- 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 see guidance below or on our website at: [agendas and public comment](#).*
- 7. APPROVAL OF CONSENT AGENDA**

Consent Agenda Items

- a. Approval of EPC Meeting Minutes for October 20, 2022 2
- b. Monthly Activity Report FY2023 (October, November, December)..... 6
- c. Pollution Recovery Fund (PRF) Budget FY2023 9
- d. Legal Case Notification 11
- e. Request for authority to take appropriate legal action against AM Properties Tampa LLC..... 13

8. PUBLIC HEARING *(None)*

9. REGULAR AGENDA

- a. Final Order Proceeding in L. Krentz and K. Goodwin v. Park Square Enterprises, LLC and EPC, Case No. 22-EPC-006 15
- b. Old Landfills Redevelopment Program Presentation 72
- c. Request to Initiate Fee Study and Rulemaking Regarding EPC Fees (Chapter 1-6, Rules of the EPC) 73
- d. 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.

Anyone who wishes to speak either virtually or in-person during the meeting may do so by completing the online Public Comment Form found at: www.epchc.org/pubcomment. The form is open 48 hours prior to the start of the meeting for both virtual and in-person appearances. Virtual speakers must submit the online public comment form at least 30 minutes prior to the start of the meeting. In-person speakers will be able to sign up using the same online form 48 hours prior to arrival or can sign up on-site via our kiosk up until the start of the meeting. Visit the EPC webpage for more details on [agendas and public comment](#). Seating inside the Boardroom may be limited. This meeting will also 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: January 12, 2023

Subject: Approval of the October 20, 2022, EPC meeting minutes.

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Approve the October 20, 2022, EPC meeting minutes.

Brief Summary: Staff requests the Commission approve the meeting minutes from the Commission meeting held on October 20, 2022.

Financial Impact: No Financial Impact

List of Attachments: Draft copy of the October 20, 2022, EPC meeting minutes.

Background: None

OCTOBER 20, 2022 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, October 20, 2022, 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, Pat Kemp (via telephone), Gwen Myers, Kimberly Overman, and Stacy White.

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

▶ Chair Smith called the meeting to order at 9:08 a.m. ▶ Commissioner White 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 Lorton, EPC Executive Director, stated there were no changes to the agenda.

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

5. RECOGNITIONS and PROCLAMATIONS

Farwell to Commissioner Stacy White.

▶ Ms. Lorton shared a presentation. ▶ Laudatory remarks followed.

6. PUBLIC COMMENT - ▶ **None.**

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

- a. Approval of EPC Meeting Minutes - September 15, 2022
- b. Monthly Activity Report Fiscal Year (FY) 2022 (September)
- c. Pollution Recovery Fund (RFP) Budget FY 2022
- d. Second Amendment to RFP Agreement with Audubon Florida for Agreement 17-02: Invasive Tree Removal from Audubon's Bird Island, Green Key, and Whiskey Stump Key Sanctuaries
- e. Selection Performance Measure Goals Quarterly Update

THURSDAY, OCTOBER 20, 2022

▶ **Commissioner White moved consent, seconded by Commissioner Myers.** Upon roll call vote, ▶ **the motion carried six to zero.** (Commissioner Kemp was out of the room.)

8. PUBLIC HEARING - **None.**

9. REGULAR AGENDA

a. FY 2022 Performance Evaluation of the Executive Director

▶ After comments from Ms. Lorton and Commissioner White, ▶ Ms. Elaine Deleeuw, EPC, spoke to the item. Following accolades from the EPC Board,

▶ **Commissioner Cohen moved to make Ms. Lorton's salary commensurate with the other contract employees that the Board of County Commissioners (BOCC) discussed yesterday at the 7 percent increase, seconded by Commissioner Myers.** ▶ EPC General Counsel Rick Muratti clarified the motion process.

▶ **Commissioner Myers amended Commissioner Cohen's motion to make the salary retroactive back to October 1, 2022, as the Board of County Commissioner had done with the other contracted employees, to which Commissioner Cohen confirmed.** Upon roll call vote, ▶ **the motion carried seven to zero.**

b. Revisions to the Employment Agreement of the Executive Director

▶ Ms. Deleeuw delivered a presentation. ▶ **Commissioner Cohen moved approval, seconded by Commissioner Myers,** who asked was the agenda item retroactive to October 1, 2022, to which **Commissioner Cohen confirmed.** Upon roll call vote, ▶ **the motion carried seven to zero.**

c. Air Quality Concerns Regarding Interstate 275 Expansion Update

▶ Ms. Lorton and ▶ Mr. Jason Waters, EPC, talked about the item. Discussion ensued. ▶ **Commissioner Kemp moved to receive the report, seconded by Commissioner Overman.** Upon roll call vote, ▶ **the motion carried six to zero.** (Commissioner Hagan was out of the room.)

d. Small Quantity Generator/Hazardous Waste Program Presentation

▶ Ms. Lorton and ▶ Ms. Shannon Camp, EPC, expounded on the item. ▶ Chair Smith inquired on storm drainage dumping and proper hazardous material disposal.

THURSDAY, OCTOBER 20, 2022

e. Executive Director's Report

▶ Ms. Lorton shared the presentation.

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

ADJOURN

▶ There being no further business, the meeting was adjourned at 10:14 a.m.

READ AND APPROVED: _____

CHAIR

ATTEST:
CINDY STUART, CLERK

By: _____
Deputy Clerk

ad

DRAFT



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.b.

Date of EPC Meeting: January 12, 2023

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 and November FY23

Background: Select data that is associated with the EPC's five core functions; outreach, monitoring, permitting, 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
FY23

		<u>October</u>	<u>November</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	6	10
3	Citizen Support (walk-ins, file reviews, email/letter correspondence, etc.)	273	278	551
B.	<u>Core Function: Air & Water Monitoring</u>			
1	Air Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	94.7%	92.0%	N/A
2	Water Quality Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	98.6%	99.6%	N/A
3	Number of Noise Monitoring Events	3	0	3
C.	<u>Core Function: Environmental Permitting</u>			
1	Permit/Authorization Applications Received	125	202	327
2	Applications In-house >180 days	1	1	N/A
3	Permits/Authorizations Issued	136	93	229
4	Petroleum Cleanup Cases	94	104	198
D.	<u>Core Function: Compliance Assurance</u>			
1	Compliance Inspections	284	365	649
2	Compliance Test Reviews (NOTE: Wetlands reviews included under D.1)	125	127	252
3	Compliance Assistance Letters Issued	149	161	310
4	Warning Notices Issued	26	15	41
E.	<u>Core Function: Enforcement</u>			
1	New Cases Initiated	6	4	10
2	Active Cases	84	86	N/A
3	Tracking Cases	50	50	N/A



Citizen Support & Outreach

Environmental Complaints Received for FY2023

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Environmental Complaints Received	Oct	Nov	FY2023
Agency Total	132	90	354
Air Division	49	33	135
General	6	2	12
Noise	22	26	86
Open Burning	14	3	22
Pollution	7	2	15
Waste Division	11	9	26
General	1	1	2
Pollution			1
Solid & Hazardous Waste	2	5	9
SQG	8	3	14
Water Division	34	20	92
General	2		6
Unauthorized Discharge/Disposal	11	3	21
Wastewater	17	15	56
Water Pollution/Quality	4	2	9
Wetlands Division	38	28	101
Dredge & Fill	11	10	33
General	3	1	4
Mangrove Impacts	3	1	5
Unauthorized Seawall/Dock	6	4	16
Water Pollution/Quality	1		3
Wetland Clearing	10	11	32
Wetland Flooding/Drainage	4	1	8



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.c.

Date of EPC Meeting: January 12, 2023

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 23 POLLUTION RECOVERY FUND
10/1/2022 through 12/31/2022**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 1,136,503	Artificial Reef	\$ 33,852	Minimum Balance	\$ 120,000	
Interest	\$ 678	Open Projects	\$ 345,259	Est. FY 24 Budget	\$ 33,852	
Deposits	\$ 120,182			Asbestos Removal	\$ 5,000	
Total	\$ 1,257,363	Total	\$ 379,111	Total	\$ 158,852	\$ 719,400

PROJECT	Project Amount	Project Balance	
FY21 Projects			
TBW 2D Island Living Shoreline	10131.102063.582990.5370.1350	\$ 49,560	\$ 30,541
Eckerd College Microplastic Pollution	10131.102063.582990.5370.1351	\$ 49,450	\$ 49,450
USF Multidrug Resistant Bacteria	10131.102063.581990.5370.1353	\$ 50,000	\$ 33,830
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	\$ 13,322
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	\$ 3,500
UF/IFAS Florida Friendly Landscaping	10131.102063.581990.5370.1358	\$ 8,600	\$ 8,600
		\$ 336,610	\$ 226,243
FY22 Projects			
DOH/EPC Radon Study	10131.102063.534990.5370.1359	\$ 20,860	\$ 15,745
DOH/EPC Radon Study	10131.102063.552001.5370.1359	\$ 14,000	\$ 8,198
Heckman Petro. Assess.	10131.102063.534990.5370.1297	\$ 15,000	\$ 15,000
		\$ 49,860	\$ 38,943



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.d.

Date of EPC Meeting: January 12, 2023

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 cases the EPC opened since the previous Commission meeting is provided below. Occasionally, a new case or cases, may be disposed of in between the prior and current EPC meetings, yet this list will still be provided for continuity and consistency.

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 chart below generically refers to these cases as “Administrative Appeal,” but it could also be an extension of time to file an appeal.

The purpose of providing notice of new cases is to 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
22-EPC-011	10/27/22	Administrative	Benjamin Heldfond v Joseph Varner and EPC	Wetlands
22-EPC-012	12/01/22	Administrative	Argos USA, LLC v. EPC	Air
22-EPC-013	12/02/22	Civil	EPC v. Unique Deals LLC, Paul Savich, Ernest M. Haefele, Jr. (a.k.a Ernest M. Haefele)	Waste
22-EPC-014	12/12/22	Administrative	Tom and Heather Stathopoulos v. EPC	Wetlands
22-PEC-015	12/15/22	Administrative	James Anderson v. Joel Juren and EPC	Wetlands



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.e.

Date of EPC Meeting: January 12, 2023

Subject: Request for authority to take appropriate legal action against AM Properties Tampa LLC.

Agenda Section: Consent Agenda

Division: Waste Division

Recommendation: Grant authority to pursue appropriate legal action and grant Executive Director or designee settlement authority.

Brief Summary: The Respondent AM Properties Tampa LLC owns property located at 403 East Sligh Avenue, Tampa, Florida, Folio 162677-0000 (Property). On November 7, 1995 and January 21, 1998 there were two discharges of petroleum product that occurred on the property which required site rehabilitation activities to address the contamination. The required work was initiated under the previous owners but not completed and the current property owner remains responsible to complete the work. On August 25, 2022, a Citation of Violation and Order to Correct was issued against the Respondent for the failure to address the petroleum contamination. The Respondent is currently not in compliance with the Citation and applicable rule, thus staff recommends litigation to enforce the Citation.

Financial Impact: There is no immediate financial impact anticipated for this item. Funding for litigation may utilize general fund and Waste Division contract funds. EPC will seek to recover the costs of any litigation.

List of Attachments: None

Background: The Respondent AM Properties Tampa LLC owns property located at 403 East Sligh Avenue, Tampa, Florida, Folio 162677-0000 (Property). A retail gasoline station is located on the Property. On November 7, 1995 and January 21, 1998 there were two discharges of petroleum product that occurred on the Property which required the initiation of a Site Assessment. A Site Assessment was completed in 2003 which resulted in the initiation of a Remedial Action Plan (RAP) to address the contamination on the Property. The RAP was modified in 2013 to address the residual Total Recoverable Petroleum Hydrocarbons (TRPH) contaminated groundwater and Underground Injection Control (UIC) exceedances. Active remediation under the RAP and RAP modification was never completed. The EPC sought corrective actions against the previous owners and then the Respondent AM Properties Tampa LLC acquired the Property on May 9, 2019, which included the assumption of the required corrective actions. The current property owner has not done any required work to address the contamination under Chapter 1-7, Rules of the EPC and Chapter 62-780, Florida Administrative Code (F.A.C.). A Citation of Violation and Order to Correct was issued on August 25, 2022 against the Respondent for EPC and Florida Department of Environmental Protection (FDEP) rule violations for the failure to address the petroleum contamination.

The Property remains out of compliance with the Citation and the applicable laws and rules concerning petroleum contamination.

The EPC, through a contracted program with the FDEP, conducts compliance and enforcement actions in Hillsborough County concerning this type of petroleum contamination. The EPC also has authority for this action under its Enabling Act, Chapter 84-446, Laws of Florida, as amended and the EPC has adopted in EPC Rule Chapter 1-7, the Waste Management Rule standards and criteria as adopted from FDEP Rule Chapter 62-780, F.A.C. to address this type of petroleum contamination. The EPC staff request the Commission grant staff authority to take appropriate legal action, including but not limited to filing a civil lawsuit, and also authorize the Executive Director to enter into any potential settlement.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.a.

Date of EPC Meeting: January 12, 2023

Subject: Final Order Proceeding in Lenore Krentz and Kenneth Goodwin vs. Park Square Enterprises, LLC and Environmental Protection Commission, Case No. 22-EPC-006

Agenda Section: Regular Agenda

Division: Legal Department

Recommendation: Adopt the Hearing Officer's findings of fact, make appropriate conclusions of law, and render a Final Order with minor non-substantive revisions to the Hearing Officer's Recommended Order. Authorize the Chair to execute the Final Order.

Brief Summary: Lenore Krentz and Kenneth Goodwin appealed the EPC's issuance of a permit to Park Square Enterprises, LLC to trim mangroves on its property in Apollo Beach. The EPC and Park Square Enterprises filed a Joint Motion for Summary Recommended Order arguing the law supports issuance of the permit. The Hearing Officer issued a Recommended Order in this matter in favor of the permit applicant (Park Square Enterprises) and the EPC. The Commissioners, in their quasi-judicial role, must render a Final Order affirming, reversing, or modifying the Recommended Order. Commissioner Counsel recommends issuance of a Final Order adopting the Recommended Order with minor non-substantive revisions.

Financial Impact: No financial impact.

List of Attachments: 1) Hearing Officer's Recommended Order; 2) Mangrove Permit; 3) Amended Notice of Appeal; 4) Appellees' Joint Motion for Summary Recommended Order (without exhibits); and 5) Appellants' Response to the Joint Motion

Background:

The Environmental Protection Commission of Hillsborough County (EPC) is delegated by the State of Florida Department of Environmental Protection (DEP) to regulate mangrove trimming in Hillsborough County on behalf of the State. Park Square Enterprises, LLC (Park Square or Appellee) filed an application with the EPC requesting authorization to trim mangroves on their property located at Folio Number 054191-1128, Apollo Beach in Hillsborough County with a legal description of Mirabay Parcel 7, Phase 1, Tract C-1, Wetland. The area to be trimmed is a mangrove fringe on property designated as condominium homeowners' association property.

On March 4, 2022, the EPC issued to Park Square a mangrove trimming permit entitled "Other Trimming of Mangroves Authorization" (Permit) (see attached). Pursuant to Chapter 1-14, Rules of the EPC (Mangrove Trimming and Preservation Rule) which generally implements State mangrove law, the

Permit is conditioned as to how much mangrove can be trimmed and requires mitigation to offset the wetland impact.

On June 15, 2022, Lenore Krentz and Kenneth Goodwin (Appellants) filed an amended notice of appeal (Appeal) of the Permit (see attached). The Appellants live at 5613 Seagrass Place, Apollo Beach, which is across a canal from the proposed trimming area. The Appellants argue, in part, that the trimming would deprive them of “peaceful enjoyment of our property” and cause “disruption and loss of wildlife habitat.” The appeal (*Lenore Krentz and Kenneth Goodwin vs. Park Square Enterprises, LLC and EPC - Case No. 22-EPC-006*) was transferred to the assigned Hearing Officer to conduct an evidentiary hearing and consider motions. On October 13, 2022, Appellees (Park Square and EPC) filed a Joint Motion for Summary Recommended Order (Joint Motion) (see attached without exhibits) pursuant to section 1-2.32(i), Rules of the EPC. Appellants Krentz and Goodwin filed a Response to the Joint Motion on October 24, 2022 (see attached). The Appellants acknowledged in their Appeal that there are no issues of material fact, thus the Joint Motion focused on whether the law supports issuance of the Permit. No evidentiary hearing is required in this situation.

On November 2, 2022, the Hearing Officer issued a Recommended Order (see attached) in favor of the Appellees Park Square and EPC recommending issuance of the Permit and disposing of the case without need for an evidentiary hearing.

Pursuant to section 1-2.35(a), Rules of the EPC, the parties had 10 calendar days to file exceptions to the Recommended Order, wherein they could argue if facts or laws were inaccurate in the Recommended Order. No exceptions were filed by any party. Section 1-2.35(c), Rules of the EPC, provides that if no exceptions are filed, the Commission shall adopt the Hearing Officer’s findings of fact and shall make appropriate conclusions of law and render a Final Order.

Pursuant to Section 9 of the EPC Act and section 1-2.35, Rules of the EPC, the Commission must now sit in a quasi-judicial capacity to affirm, reverse, or modify the Hearing Officer’s Recommended Order through issuance of a Final Order. Typically, if exceptions were filed, then by rule the parties would be granted time for oral argument before the Commission. As no exceptions to the Recommended Order were filed, no oral argument is required. Moreover, EPC rules make it mandatory that “the Commission shall adopt the Hearing Officer’s findings of fact” when no exceptions are filed. On January 12, 2023, at the regular EPC Commission meeting, it is recommended that the Commission adopt the Recommended Order as a Final Order granting a full five-year permit. Commission Counsel, Rick Muratti, who was not a litigant in the underlying case, will provide minor non-substantive revisions that can also be adopted in the Final Order. Commission Counsel will draft the Final Order based on the Commission’s vote and deliver it to the Chair for signature. Two proposed changes are as follows, but more may be identified during the meeting:

- 1) In the last sentence of Paragraph 39 of the Recommend Order Conclusions of Law Section, strike the phrase “With the issuance of the Mangrove Permit.” This proceeding is designed to determine if a permit should issue and cannot issue until the Final Order is approved, thus the phrase is premature. The remainder of the sentence is accurate and should be unchanged.
- 2) In Paragraph 41 of the Recommend Order Conclusions of Law Section, the word “dish” is a scrivener’s error and should be replaced with the word “fish.”

The Commission will have an opportunity at the meeting to ask questions and then should vote to take action on the Hearing Officer's Recommended Order. No evidence should be considered that was not considered and accepted by the Hearing Officer. No new facts can be raised or considered.

Since this appeal process is litigation, it is incumbent on the Commissioners, acting as judges, and all parties in the matter to avoid ex-parte communication. It would be improper for any party or their representatives to contact the Commission regarding the substance of this litigation without all parties being physically present or copied on any written communications.

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

LENORE KRENTZ and KENNETH GOODWIN,

Appellants,

vs.

EPC Case No. 22-EPC-006

**PARK SQUARE ENTERPRISES, LLC, and
ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY,**

Appellees.

RECOMMENDED ORDER

This matter comes before Thomas A. Thanas, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter "EPC"), on the Joint Motion for Summary Recommended Order filed pursuant to Rule 1-2.32(i) of the Rules of the EPC by the Appellees, Park Square Enterprises, LLC (hereinafter "PSE") and the EPC on the Amended Notice of Appeal filed on June 15, 2022, by the Appellants, Lenore Krentz and Ken Goodwin (hereinafter "Appellants"). The Amended Notice of Appeal was filed pursuant to Section 9 of the Hillsborough Country Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, and Rule 1-2.30 of the Rules of the EPC and challenges an order entered by the Executive Director of the EPC on March 4, 2022, authorizing the issuance of a Mangrove Trimming Permit to PSE for property under PSE's control.

ATTACHMENT 1

APPEARANCES

FOR APPELLANTS:

Lenore Krentz and Kenneth Goodwin (self represented)
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STATEMENT OF THE ISSUE

The primary issue in this case is whether the Executive Director erred in issuing the order authorizing the issuance of a mangrove trimming permit that was issued by the Executive Director to PSE based on the Executive Director’s application of Chapter 1-14, Section 1-11.08, of the Rules of the EPC (Wetlands Rule - Mitigation), and Section 62- 345, F.A.C. Specifically, did the Executive Director of the EPC err in issuing the March 4th order, and should the EPC Commission reverse the March 4th order and require PSE to replant the upland area where the invasive vegetation was removed with wetland and native species?

PRELIMINARY STATEMENT

On November 17, 2021, PSE submitted to the EPC Executive Director an Application for Mangrove Trimming Permit for the purpose of window and stage trimming the riparian mangrove fringe located along the shoreline to the west of property located west of residences on Golden Isles Drive within the Mira Bay residential neighborhood off of State Highway 41 in Hillsborough County,

Florida. The EPC administrative staff reviewed the application under Chapter 1-14, Rules of the EPC (Mangrove Trimming and Preservation) and Section 1-11.08 of the Rules of the EPC regarding the appropriate level of mitigation to offset the trimming. The EPC Executive Director issued a “Other Trimming of Mangroves Authorization” (Mangrove Permit) pursuant to Section 1-14.07, Rules of the EPC, on March 4, 2022.

The original Notice of Appeal was submitted by the Appellants on May 20, 2022, but was dismissed with leave to amend. On June 15, 2022, the Appellants filed an Amended Notice of Appeal that replaced the original notice of appeal.

After meeting with the parties, the Hearing Officer entered an Agreed Case Management Order on July 23, 2022, setting forth discovery deadlines, a final hearing date of November 17, 2022, and other terms and conditions for the management of the appeal.

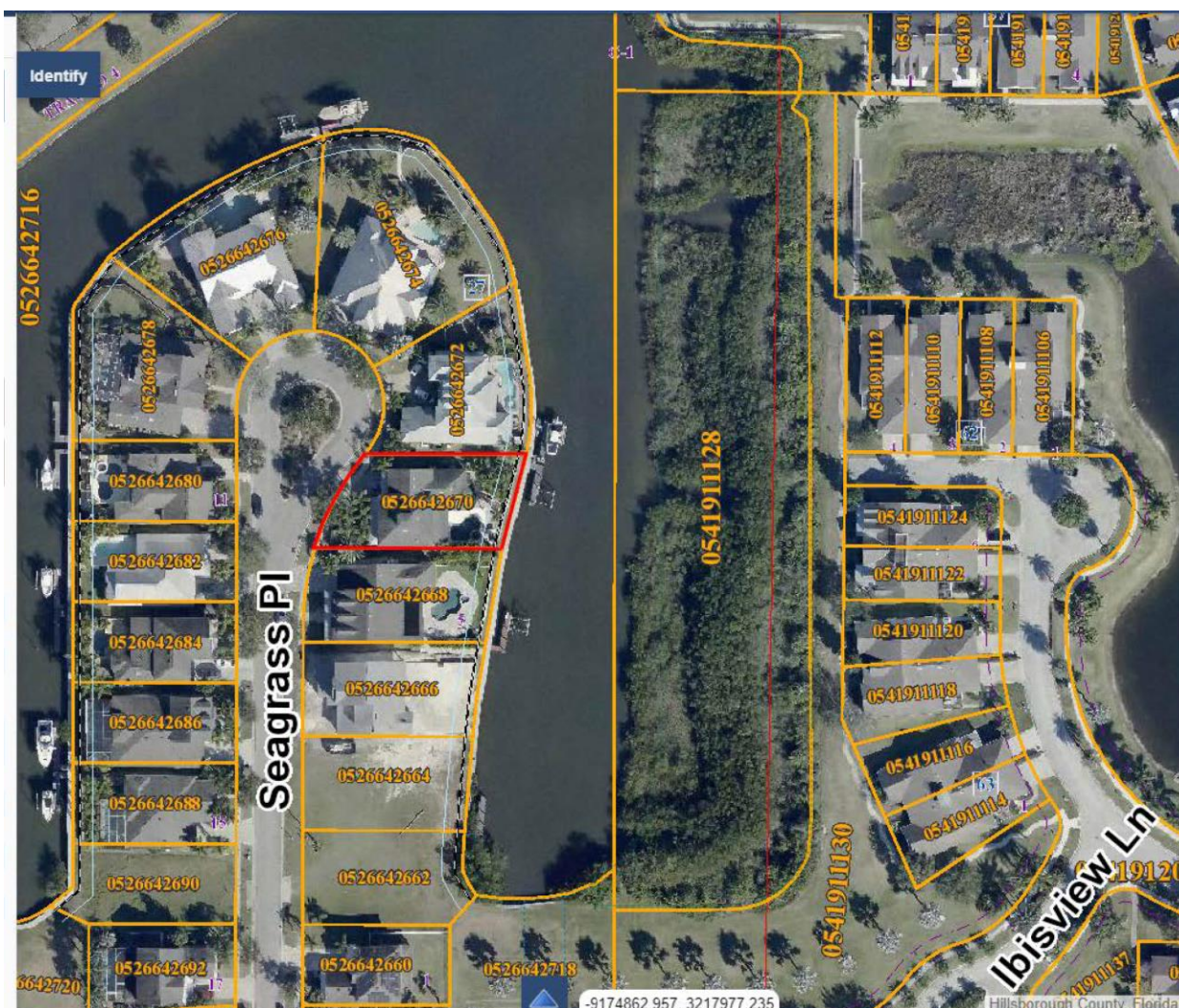
On October 13, 2022, PSE and the EPC filed a Joint Motion to Dismiss and Motion for Summary Order (hereinafter "Motion"), and the Appellants were given an opportunity to respond to the Motion. The Motion included seven exhibits which are now part of the record of proceedings:

- *Exhibit 1:* PSE’s Project Site (aerial photograph depicting the project site outlined in red).
- *Exhibit 2:* Appellant’s Property (aerial photograph depicting the Appellants’ lot outlined in red).
- *Exhibit 3:* Mangrove Trimming Application filed by PSE on November 17, 2021.
- *Exhibit 4:* Mangrove Trimming Permit issued by the EPC Executive Director on March 4, 2022.
- *Exhibit 5:* Amended Notice of Appeal filed by Appellants on June 15, 2022.
- *Exhibit 6:* Appellants’ Discovery Response filed on September 15, 2022.
- *Exhibit 7:* Amended Conservation Easement dated September 6, 2013, and recorded on September 2, 2013.

On October 24, 2022, the Appellants filed their written response to the Motion.

The Motion and its seven exhibits and the Appellants' response to the Motion are made part of the record of proceedings. This Recommended Order is made based on the documents identified above that are part of the record of proceedings.

To better convey the proximity of the Appellants' lot, which is their personal residence, to the project site for which PSE sought a mangrove trimming permit, the following photograph shows the Appellants' lot outlined in red and the project site identified as #054191-1128:



PSE AND EPC'S POSITION ON THEIR JOINT MOTION

PSE and the EPC have filed their Motion based on their position that there are no genuine

issues as to any material fact and that Appellees are entitled to a judgement as a matter of law. PSE and the EPC assert that the Appellants' factual allegations and their legal interpretations of EPC Rules are not in accordance with the application and interpretations of EPC Act and Rules. PSE and the EPC assert that the Hearing Officer should issue a Recommended Order based on the record of proceedings and that a hearing on the appeal is not necessary.

THE APPELLANTS' OPPOSITION TO THE JOINT MOTION

The Appellants state their opposition to the Motion as follows on pages 3 and 4 of their response submitted on September 15, 2022:

1. The Proposed Action is subject to the application of Chapter 1-11. Chapter 1-11.11(2)(d) "These exemptions do not apply to wetlands created, enhanced, or restored as mitigation for wetlands or surface water impacts under a permit issued by the Executive Director, DEP, SWFWMD or United States Army Corps of Engineers."
2. The Proposed Action violates Chapter 1-11.01(1) "It is the policy of the State of Florida and the Environmental Protection Commission to preserve the essential character of wetland property. The owner of wetlands has no right to use them for a purpose for which they are unsuited in their natural state. It shall be the priority of the Environmental Protection Commission to avoid the disturbance of wetlands in the County and to encourage their use only for purposes which are compatible with their natural functions and the environmental benefits. It is the intent of the Commission that development requiring mitigation be a last resort used only when reasonable use of the property is otherwise unavailable."
3. The Proposed Action does not comply with Chapter 1-11.10(b) "Nuisance and exotic vegetation removal in wetlands. Phased removal of the vegetation or replanting with wetland desirable species may be necessary to ensure erosion control and/or to ensure the area is adequately re-vegetated."
4. The Proposed Action violates the Amended Conservation Easement dated September 6, 2013 Item (1).
5. The Proposed Action does not qualify as maintenance as allowed under Chapter 1-14.04 Definitions.

The Appellants have asked for the following specific items of relief in their appeal:

- The EPC Commission revoke the Other Trimming of Mangroves Authorization in its entirety.

- The EPC Commission require PSE to complete the replanting of the upland area, where the invasive vegetation was removed, with wetland or native desirable species as is necessary to ensure erosion control and to ensure the area is adequately re-vegetated.

**UNDISPUTED FACTS FOR PURPOSES OF THE MOTION
FOR SUMMARY RECOMMENDED ORDER**

PSE and the EPC have set forth in their Motion a set of facts that PSE and the EPC believe are not in dispute, including certain statements that the Appellants have set forth in their response (Exhibit 5) to the Motion and in their response to discovery requests (Exhibit 6), both of which were filed on September 15, 2022. The Hearing Officer accepts those statements as undisputed for the purpose of making a recommendation on the Motion. Those facts confirmed to be undisputed by the Hearing Officer are as follows:

1. The EPC is a local environmental regulatory agency. The EPC is authorized to enforce the Hillsborough Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495, Laws of Florida (the "EPC Act"), and the administrative rules promulgated by the EPC ("EPC Rules").
2. The pleadings and evidence in the record of proceedings include the documents that are identified in the "Preliminary Statement" section on pages 3 and 4 of this Recommended Order. Those documents constitute the "Record" on which this Recommended Order is being issued.
3. No supporting affidavits were provided by any of the parties.
4. The subject property under PSE's control is identified by Folio #054191-1128, located west of Golden Isles Drive, Apollo Beach, FL, 33572, with no physical address (hereinafter "the Project Site").
5. The Appellants own upland property located across the canal from the Project Site.

The Appellants' property is identified by Folio #052664-2670, with a physical address of 5613 Seagrass Place, Apollo Beach, FL 33572.

6. On November 17, 2021, PSE submitted an Application for Mangrove Trimming Permit and subsequent request for additional information response (Trimming Application), to EPC under Review No. 68100, for the trimming of riparian mangroves along the Project Site. (*See Trimming Application - Exhibit 3.*)

7. PSE's application proposed "[t]rimming pursuant to section 1-14.07, Rules of the EPC. Proposed trimming which exceeds the criteria within section 1-14.06. Must not be contrary to the public interest as provided in section 1-14.07, including cumulative impacts, and will require compensation pursuant to Chapter 1-11.08, Wetlands, Rules of the EPC." (*See Exhibit 3, page 4.*)

8. The application was reviewed, and a Mangrove Permit was issued to PSE on March 4, 2022, by the Executive Director of the EPC. (*See Mangrove Permit - Exhibit 4.*)

9. The Appellants filed a Notice of Appeal on May 20, 2022. The Notice of Appeal was dismissed with leave to amend, and the Appellants filed an Amended Notice of Appeal on June 15, 2022. (*See Appellants' Amended Notice of Appeal - Exhibit 5.*)

10. In their Amended Notice of Appeal, the Appellants have asserted that there are no disputed issues of material fact. (*See Exhibit 5, page 2, paragraph 3.*)

11. The Appellants have stated: "The proposed action is the Other Trimming of Mangroves Authorization in a Conservation Easement." (*See Exhibit 5, page 2, paragraph 4)a) and Exhibit 7.*)

12. The Appellants have further stated: "The original Conservation Easement was dated December 9, 2004, and recorded on December 13, 2004 in the Public Records of Hillsborough County, Florida at O BK 14491 pg. 1164. An Amended Conservation Easement was given and

replaced the original CE on September 6, 2013, and recorded on October 2, 2013 in the Public Records of Hillsborough County, Florida at O BK 22178 pg. 474-484. The Amended Conservation Easement modified the Prohibited Uses to allow for limited trimming mangroves and the maintenance or removal of invasive exotic plant species in accordance with a plan approved by the EPC.” (See *Exhibit 5, page 2, paragraph 4)b) and Exhibit 7.*)

13. The Appellants have further stated: “The Item 10 of the Other Trimming of Mangroves Authorization has already been completed as the nuisance or invasive plant species were removed from the Conservation Area in May 2022. The area is a mess where the vegetation was removed and no plan exists to replace it or fill in the large vacant spaces – the trim plan estimated the exotic removal area to be 0.5 acres.” (See *Exhibit 5, page 2, paragraph 4)c.*)

14. The Appellants have further stated: “Wildlife that has been identified inhabiting or frequenting the Conservation Area and the waterway that flows through the mangroves and/or abuts the area include the following: dolphins, manatees, snook, catfish, mullet, redfish, jacks, mangrove snapper, baitfish, stingrays, bald eagles, falcons, osprey, pink spoonbill, anhinga, egrets, herons, rabbits, fox, raccoon, possum and bats.” (See *Exhibit 5, page 2, paragraph 4)d.*)

15. The Appellants have further stated: “The Uniform Mitigation Assessment did not note any observation of wildlife in the Conservation Easement area. There was no other wildlife impact study done.” (See *Exhibit 5, page 2, paragraph 4)e.*)

16. The Appellants have further stated: “It is the policy of the State of Florida and the Environmental Protection Commission to preserve the essential character of wetland property. The owner of wetlands has no right to use them for a purpose for which they are unsuited in their natural state.” (See *Exhibit 5, page 2, paragraph 4)f.*)

17. The Appellants have further stated: “It is the priority of the Environmental Protection

Commission to avoid the disturbance of wetlands in the County and to encourage their use only for purposes which are compatible with their natural functions and the environmental benefits. It is the intent of the Commission that development requiring mitigation be a last resort used only when reasonable use of the property is otherwise unavailable. (*See Exhibit 5, page 2, paragraph g.*)

18. The Appellants have further stated: “The Amended Conservation Easement, Item 1 states ‘the purpose of the Amended Conservation Easement is to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wood condition [and] to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland or upland areas included in the Conservation Easement which were enhanced, created and/or mitigated pursuant to the Mitigation Agreement shall be retained in the enhanced, created and/or mitigated conditions required by the Mitigation Agreement.’” (*See Exhibit 5, page 2, paragraph h*) and *Exhibit 7.*)

19. The Appellants have further stated: “Pursuant to Chapter 1-14.04 ‘Where a pattern of trimming has stopped such that the use intended or obtained by the trimming has been broken or lost for a sustained period of time, further trimming will not be considered maintenance.’” (*See Exhibit 5, page 2, paragraph 4)l.*)

20. The Appellants have further stated: “The trimming under [Mangrove Permit] cannot be considered maintenance trimming as evidenced by the height of the mangroves (some 24 feet tall) the trimming pattern has ceased for a sustained period of time.” (*See Exhibit 5, page 2, paragraph 4)m.*)

21. Re-vegetation in the exotic and invasive removal area on the Project Site has started to occur naturally. (*See Exhibit 6, Appellants’ response to Interrogatories paragraph 9.b., (page 6 of 10).*)

22. Neither “alter” as defined by Chapter 1-14, Rules of the EPC, nor “alteration” is

authorized under the Mangrove Permit. (*See Exhibit 6, Appellants' response to Requests for Admissions, paragraph 1.a., (page 8 of 10), and Exhibit 4, page 3 of 5, General Comments/Conditions, second bullet point.*)

23. Appellants do not dispute the UMAM score. *See Exhibit 6, Appellants' response to Requests for Admissions, paragraph 4., (page 8 of 10).*

STANDARD OF REVIEW

PSE and the EPC have accurately stated the legal standard under which a Motion for Final Recommended Order should be reviewed by the Hearing Officer. Under EPC Rules, where there are no genuine issues of material fact, any party to an EPC appeal may move for summary final order whenever there is no genuine issue as to any material fact. *EPC Rules, 1-2.32(i)*. The Florida Rules of Civil Procedure are instructive. The Florida Rules of Civil Procedure provide that after a review of the pleading and summary judgement evidence, “if there is no genuine issue as to any material face...[then] the moving party is entitled to a judgement as a matter of law.” Fla.R.Civ.P. 1.510.

In this appeal, the Appellants have acknowledged in their Amended Notice of Appeal that there are no issues of material fact. Section 1-2.33(d), Rules of the EPC, provides “fact issues not raised by the Notice of Appeal shall be accepted as undisputed.” This is an appeal which the Hearing Officer should make a recommendation based on the application of Florida law and EPC administrative rules to the undisputed facts. Based on the acknowledgment that the facts are not in dispute, this Recommended Order maybe issued without the need for an evidentiary hearing. After an examination of the pleadings and the record of proceedings as contained in the Motion and the Appellants' response, it is determined that the material facts set forth above exist without substantial controversy.

CONCLUSION OF LAW

24. The Hearing Officer has jurisdiction over the parties to and subject matter of

this proceeding pursuant to EPC's Enabling Act, 84-446, Laws of Florida, (Act) Section 9, and EPC Rules, §1-2.32.

25. A permit applicant has the burden of proof to show entitlement to the requested permit or to show an exception allowed by the rules. EPC Rules, §1-2.33(d).

26. Any party to an EPC appeal may move for summary final order whenever there is no genuine issue as to any material fact. EPC Rules, §1-2.32(i).

27. Regarding the three main points raised by the Appellants, the Hearing Officer makes the following recommendation on the conclusions of law to be drawn by the undisputed facts in the record of proceedings:

A.

Appellants' Point #1: The Mangrove Permit is not authorized in accordance with the stated policies and rules of the EPC.

28. There are three levels of mangrove trimming under Chapter 1-14, EPC Rules: noticed exemptions, mangrove trimming permits, and mangrove other trimming and alteration permits. Noticed exemptions are reviewed under Section 1-14.05 and allow for trimming of mangroves to 6 feet and other maintenance trimming of mangroves under the height of 24 feet. Mangrove trimming permits pursuant to Section 1-14.06 are for those projects that do not meet the exemption criteria under Section 1-14.05 and among other things, are limited to 33% of the drip line area (footprint) of mangroves eligible for trimming.

29. PSE's Mangrove Trimming Application exceeded the criteria under Section 1-14.05 and Section 1-14.06 because there were mangroves on the Project Site that exceeded 24 feet in height, and the area to be trimmed exceeded 33% of the eligible trimming area. *See Exhibit 3.* Therefore, the "Other Trimming and Alteration of Mangroves" permit requirements under Section 1-14.07 are applicable to the PSE Mangrove Trimming Application review.

30. The criteria to be considered by the Executive Director when determining

whether a Mangrove Permit may be issued are found in Section 1-14.07, EPC Rules, which provides:

*Section 1-14.07 OTHER TRIMMING AND ALTERATION OF MANGROVES;
PERMIT REQUIREMENT*

(a) The Executive Director, when deciding to issue or deny a permit for mangrove trimming that exceeds the requirements set forth in sections 1-14.05 and 1-14.06, Rules of the Commission or mangrove alteration under this section, shall use the criteria in section 373.414(1) and (8), F.S., as follows: (1) Whether the activity will adversely affect the public health, safety, or welfare or the property of others; (2) Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats; (3) Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling; (4) Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;

(5) Whether the activity will be of a temporary or permanent nature; (6) Whether the activity will adversely affect archaeological resources under the provisions of section 267.061, F.S.; (7) The current condition and relative value of functions being performed by areas affected by the proposed activity; and (8) The cumulative impact of similar activities pursuant to section 373.414(8), F.S..

(b) If the applicant is unable to meet these criteria, the Executive Director and the applicant shall first consider measures to reduce or eliminate the unpermittable impacts. If unpermittable impacts still remain, the applicant may propose, and the Executive Director shall consider, measures to mitigate the otherwise unpermittable impacts.

(c) The request must be made with sufficient specificity to enable the Executive Director to determine the scope and impacts of the proposed alteration activities.

(d) A request for a permit for trimming that exceeds the requirements set forth in sections 1-14.05 and 1-14.06, Rules of the Commission shall be reviewed pursuant to Section 1-11.08, Rules of the Commission and this rule chapter.

(e) A request for a permit for the alteration of mangroves will be reviewed pursuant to both the entire chapter 1-11, Rules of the Commission, and this rule chapter.

(f) The use of herbicides or other chemicals for the purposes of removing leaves from a mangrove is strictly prohibited.

(emphasis added)

31. Section 1-14.07(d), EPC Rules, states that if a request for a permit for trimming exceeds the requirements of the Noticed Exemption (Section 1-14.05) and that of a standard mangrove trim permit (Section 1-14.06), all mangrove trimming applications under this section require mitigation as determined under Section 1-11.08, EPC Rules.

32. The application of Chapter 1-11 in its entirety is required where alteration of mangroves is proposed under a mangrove trimming application review according to Section 1-14.07(e), EPC Rules. Where alteration is proposed, an applicant must show that the impact is required for the reasonable use of the property, under Chapter 1-11 criteria. Section 1-11.08(4) addresses an applicant's obligation and the goal to be achieved by mitigation as follows:

(4) The appropriate mitigation must have equal or better ecological value as compared to the affected wetland prior to impacts.

33. PSE submitted a plan and the EPC issued a permit that was in compliance with Section 1-14.07 and Section 1-11.08.

34. To the extent that the Appellants assert a distinction between "alter" and "alteration" in interpreting the Rules of the EPC, it would be beyond what is authorized by Florida law for the Hearing Officer to give those terms any definition that conflicts with their plain meaning. The Appellants attempt to distinguish between "alteration" and "alter" is misplaced, and the definition of alter applies when alteration is used under the EPC Rules.

35. To the extent that the Appellants contend that the trimming that has been done on the Project Site has left the area in a "mess" (*See Exhibit 5, page 2, paragraph 4)c*), the allegation does not rise to a legal standard that would authorize the Hearing Officer to recommend the revocation of the permit that was issued on March 4, 2022, by the EPC Executive Director.

36. While the Hearing Officer interprets the Appellants' allegation as their view as a nearby neighbor that the substantial trimming created an unattractive view and activity that is contrary to their understanding of environmental laws, Florida law and the EPC Rules do not provide a framework for fashioning a remedy for a subjective view of the aftermath of a trimming project. The trimming project either complies with the technical requirements of the EPC Rules and the terms and conditions set forth in the lawfully issued Mangrove Permit or it doesn't. If the outcome is non-compliance, that determination must be made on the issue of technical compliance and not a

subjective assessment of the final product.

37. The Hearing Officer concurs with PSE and the EPC on their position that the Mangrove Permit did not require replanting in the nuisance and exotic removal area. Section 1-11.10(b) only as applicable to the removal of nuisance and exotic vegetation states, “[p]hased removal of vegetation *or* replanting with wetlands desirable species *may be necessary to ensure erosion control and / or to ensure the area is adequately revegetated*” (emphasis added). This conditional language does not mandate the replanting of a site as requested by the Appellants, and Appellants have stated natural re-vegetation has occurred since the removal. (*See Exhibit 5, paragraph 6*)². and *Exhibit 6, page 6 of 10, paragraph 9.b.*) Therefore, the Appellants have not sufficiently stated a claim for the relief requested in the Amended Notice of Appeal.

38. The Hearing Officer also concurs with PSE and the EPC on the “reasonable assurance” standard that is applied to permits like this one. PSE and the EPC state the following: PSE’s “burden is one of reasonable assurance that its project will comply with the applicable rules. *See Ogden v Truex and EPC*, (EPC Final Order June 22, 2015). This burden is one of “reasonable assurances, not absolute guarantees.” *See Manasota-88, Inc., v. Agrico Chemical*, 12 F.A.L.R. 1319, 1325 (DER 1990). Reasonable assurance contemplates “a substantial likelihood that the project will be successfully implemented.” *Metropolitan Dade County v. Coscan Florida, Inc.*, 609 So. 2d 644, 648 (Fla. Dist. Ct. App. 1992).

39. Section 1-14.02(d) states “it is the intent of the Commission to also allow mangrove trimming at waterfront properties with mangroves where such trimming can be done consistent with the specific criteria of the Commission.” As explained previously, the specific criteria applicable to this level of mangrove trimming is contained in Section 1-14.07, EPC Rules. With the issuance of the Mangrove Permit, PSE has provided a reasonable assurance that the stage and window trimming met the applicable criteria.

B.

Appellants' Point #2: The proposed mangrove trimming does not appropriately consider existing wildlife by the failing to include a wildlife impact study.

40. To the extent that the Appellants have alleged PSE and the EPC did not consider existing wildlife by failing to require PSE to submit a wildlife impact study, the Uniform Mitigation Assessment Method ("UMAM") did not note any observation of wildlife in the Conservation Easement area.

41. While the UMAM documentation submitted to the EPC indicated there were no observations of listed species (i.e. endangered, threatened, species of special concern), the UMAM documentation stated that based on literature review, "small mammals, reptiles, amphibians, dish, mollusks, and insects" are anticipated to utilize the Project Site. (*See Exhibit 3.*)

42. Section 62-345.400(8), F.A.C., states "the [wildlife] list developed for the assessment area need not include all species which use the area, but must include all listed species in addition to those species that are characteristic of the native community type, considering the size and geographic location of the assessment area. *Generally, wildlife surveys will not be required*" (*emphasis added*).

43. As the UMAM documentation incorporated anticipated utilization of similar animal types to those identified by the Appellants, the Appellants do not dispute the UMAM score, and UMAM regulations do not require all species to be identified or a wildlife survey.

44. Accordingly, whether the UMAM identified all species allegedly observed by the Appellants or whether a wildlife study was conducted, the undisputed facts of this appeal do not warrant reversal of the Mangrove Permit.

C.

Appellants' Point #3: The proposed mangrove trimming is in violation with the existing conservation easement over the property.

45. Paragraph 1 from the Amended Conservation Easement (*Exhibit 7*) states the general purpose of executing a conservation easement as follows: "the purpose of the Amended Conservation

Easement is to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wood condition and to retain such areas as suitable habitat for fish, plants or wildlife.

46. This purpose is general compared to the more specific conditions of Paragraph 3 of the Amended Conservation Easement which provides:

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Amended Conservation Easement is prohibited. Without limiting the foregoing, the following activities and uses are expressly prohibited (“Prohibited Uses”):

...

c. *“Removal or destruction of trees, shrubs, or other vegetation, including the removal, destruction, or alteration of mangroves, except that limited trimming of mangroves shall be allowed in accordance with Chapter 1-14, Rules of the EPC and such mangrove trimming will not result in the mangroves being reduced to less than ten (10) feet in height. Any such mangrove trimming will also require prior written notice be provided to the EPC. In addition, this Amended Conservation Easement shall allow for the maintenance or removal of invasive exotic plant species in accordance with a plan approved by the EPC[.]”*

(emphasis added)

47. Because Paragraph 3.c. is more specific and allows mangrove trimming in accordance with Chapter 1-14, it is not inconsistent with Paragraph 1.

48. The Project Site remains in its “natural vegetative state” and remains “suitable for fish, plants or wildlife” because the mangroves are permitted to remain and are not to be altered, removed, or defoliated. (*See Exhibit 4.*)

49. Paragraph 1 of the Amended Conservation Easement does not require reversal of the Mangrove Permit.

50. The Project Site is under a conservation easement that allows for trimming. (*See Exhibit 7 paragraph 3.c.*)

51. The Appellants assert the following regarding the Amended Conservation Easement:

We, the appellants will immediately be deprived of peaceful enjoyment of our property. We are particularly private individuals and we purchased this specific property to ensure that we would be able to enjoy the space as desired and understanding that a large part of that privacy was due to the expanse of mangroves across the canal in a

protected Conservation Easement. We will lose material outdoor comfort with the exposure created from the proposed trimming. (See Exhibit 6, Page 1.).

52. The pleadings and evidence show there is no genuine issue as to any material fact, and PSE and the EPC are entitled to a judgment in their favor as a matter of law.

53. The appellants have identified other individuals in their response to the discovery request (*Exhibit 6*) who appear to share the Appellants' position that the trimming has deprived them of their peaceful enjoyment of their properties.

54. But the Amended Conservation Easement (*Exhibit 7*) is very specific in making as a matter of public record that the trimming of mangroves was anticipated and authorized. As stated above, Paragraph 2.c, clearly provides:

c. "Removal or destruction of trees, shrubs, or other vegetation, including the removal, destruction, or alteration of mangroves, except that limited trimming of mangroves shall be allowed in accordance with Chapter 1-14, Rules of the EPC and such mangrove trimming will not result in the mangroves being reduced to less than ten (10) feet in height. Any such mangrove trimming will also require prior written notice be provided to the EPC. In addition, this Amended Conservation Easement shall allow for the maintenance or removal of invasive exotic plant species in accordance with a plan approved by the EPC[.]"

55. The Mangrove Permit was conditioned on PSE's compliance with (a) specific trimming restrictions and (b) the EPC's mitigation requirements, and there is no evidence in the record that indicates the PSE has failed to comply with those conditions.

56. The Executive Director's permit issued on March 3, 2022, set forth the following conditions regarding trimming:

6. In the Mangrove Hedging Trimming area there were mangroves that measured up to twenty four (24) feet height in the proposed trimming area, as measured from the substrate. To prevent defoliation, the trimming of mangroves that are 16 feet or greater in pre-trimmed height must be conducted in stages so that no more than 25 percent of the pre-trimmed foliage is removed annually. Be advised, the 25% restrictions stated above will be strictly enforced. The PMT must use caution when trimming the mangroves to ensure that trimming is conducted in such a manner that does not result in mangrove alteration/defoliation.

7. *In the Mangrove Window Trimming area, mangrove branches shall be trimmed between ten (10) feet and fifteen (15) feet as measured from the substrate to create windows/view corridors.*

9. *In the Mangrove Hedge Trimming area, no mangrove may be trimmed so that the overall height is reduced to less than ten (10) feet as measured from the substrate, pursuant to the Conservation Easement (Book 22178 Page 474-484).*

(See Exhibit 4, Page 4, Sections 6, 7, and 9.)

57. The Executive Director's permit issued on March 3, 2022, also set forth the following conditions regarding PSE's obligation for mitigation:

Mitigation is required to compensate for the mangrove trimming. Utilizing the Uniform Mitigation Assessment Method outlined in Chapter 62-345, Florida Administrative Code (F.A.C.), it was determined that the proposed trimming will result in the loss of 0.07 functional units. The applicant shall mitigate the mangrove trimming impacts via the purchase of credits from an appropriate mitigation bank prior to any trimming occurring. The applicant has indicated the required 0.10 acre credits will be acquired from the estuarine forest ledger from the Tampa Bay Mitigation Bank.

(See Exhibit 4, Page 4, Section 2.)

58. While those conditions do not ameliorate the Appellants' grievance with the trimming work authorized by the EPC and completed by PSE, those conditions are what Florida law and EPC Rules require.

RECOMMENDATION ON NEXT PAGE

RECOMMENDATION

Based on the foregoing undisputed facts and conclusions of law, it is RECOMMENDED by the Hearing Officer that the EPC Commission enter a Final Order upholding the issuance of the Mangrove Permit dated March 4, 2022, and that the Executive Director's decision on the permit application be affirmed.

The hearing date scheduled for November 17, 2022, is cancelled.

Respectfully submitted,

Thomas A. Thanas

**Thomas A. Thanas
EPC Hearing Officer
Dye, Harrison, Kirkland, Petruff, & Pratt
1206 Manatee Ave West
Bradenton, FL 34205
Phone: 941-866-8376
E-mail: tthanas@dveharrison.com**

Dated: November 2, 2022

CERTIFICATE OF SERVICE TO PERSONS ON SERVICE LIST

I certify that a copy of the Recommended Order was sent via electronic mail to the persons identified on the service list below on November 2, 2022.

- Lenore Krentz (Appellant) at lenoreloretta@aol.com
- Kenneth Goodwin (Appellant) at kengoodwin4@aol.com
- Park Square Enterprises, LLC (Appellee/Applicant) at rebecca.rhoden@lowndes-law.com and tina.altoff@lowndes-law.com
- Ruth "Beth" Le, Esq. (Appellee EPC) at leb@epchc.org
- Jeannette Figari, EPC Legal Clerk at legalclerk@epchc.org

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March 4, 2022

ATTACHMENT 2

Park Square Enterprises, LLC
c/o Suresh Gupta
5200 Vineland Road, Suite 200
Orlando, FL 32811

Owner: Park Square Enterprises, LLC
EPC Review Number: 68100
Type of Permit / Authorization: **OTHER TRIMMING OF MANGROVES AUTHORIZATION**
Project Address: Tides Place, Apollo Beach, FL - Mirabay Parcel 7, Phase 1, Tract C-1
STR: 29-31S-19E
Folio: 054191-1128

Dear Mr. Gupta:

The staff of the Environmental Protection Commission of Hillsborough County (EPC) has completed a review of the subject application submitted on November 17, 2021, and a revised site plan submitted on February 3, 2022, by Marc Ebling (Agent) to trim mangroves in Hillsborough County. The proposed trimming of 81% of the mangroves exceeds the requirements of a Section 1-14.06 “Trim Permit”. The proposed mangrove trimming area is 0.98 acres which is greater than the Trim Permit amount by 0.58 acres, therefore the project requires mitigation.

In accordance with the Mangrove Rule, Chapter 1-14, Rules of the EPC, the applicant has demonstrated that they have met the criteria set forth in section 1-14.07 (a) & (d), Rules of the EPC. The Applicant is the owner of the submerged property where the mangroves are located. This authorization will provide a greater vista for the residences of the subdivision and mitigation will be provided. Therefore, this letter shall serve as documentation that the EPC Executive Director has authorized Other Trimming of Mangroves subject to the conditions and comments enumerated below:

- 1. Only those wetland impacts identified in the table below are authorized for impact:

Wetland ID	FLUCCS (Florida Land Use, Cover and Forms Classification System)	Impact Acreage	Functional Loss	Mitigation Type
Mangrove Hedging Area	612 (Mangrove Swamps)	0.29	0.04	Mitigation Bank
Mangrove Window Trimming Area	612 (Mangrove Swamps)	0.29	0.03	Mitigation Bank
Total Impacts		0.58 acres	0.07 FL / 0.72 RFG = 0.10 ac	0.10 acres of Estuarine Forest Credits

2. Mitigation is required to compensate for the mangrove trimming. Utilizing the Uniform Mitigation Assessment Method outlined in Chapter 62-345, Florida Administrative Code (F.A.C.), it was determined that the proposed trimming will result in the loss of 0.07 functional units. The applicant shall mitigate the mangrove trimming impacts via the purchase of credits from an appropriate mitigation bank prior to any trimming occurring. The applicant has indicated the required 0.10 acre credits will be acquired from the estuarine forest ledger from the Tampa Bay Mitigation Bank.
3. Prior to mangrove trimming occurring, staff of the EPC must receive documentation of the purchase of the 0.10 acres of estuarine forest credits from the Tampa Bay Mitigation Bank and the ledger of remaining credits in the mitigation bank. Under no circumstance may mangrove trimming occur until EPC staff has received the documentation of the purchase of the credits from the mitigation bank.
4. This authorization is valid for a period of five years from the date of this letter (expiration date March 4, 2027). If the site plans are altered or the time period for the allotted impact expires, this mangrove trimming and alteration approval will become invalid.
5. The EPC Executive Director may revoke this authorization in accordance with Section 1-2.052, Rules of the EPC.
6. In the Mangrove Hedging Trimming area there were mangroves that measured up to twenty four (24) feet height in the proposed trimming area, as measured from the substrate. To prevent defoliation, the trimming of mangroves that are 16 feet or greater in pre-trimmed height must be conducted in stages so that no more than 25 percent of the pre-trimmed foliage is removed annually. Be advised, the 25% restrictions stated above will be strictly enforced. The PMT must use caution when trimming the mangroves to ensure that trimming is conducted in such a manner that does not result in mangrove alteration/defoliation.
7. In the Mangrove Window Trimming area, mangrove branches shall be trimmed between ten (10) feet and fifteen (15) feet as measured from the substrate to create windows/view corridors.
8. Pursuant to Section 1-14.06(11), for a "Trim Permit" mangrove trimming may only be conducted from April 1 through November 1 of each calendar year. Since this authorization is for an "Other Trimming Permit" pursuant to Section 1-14.07 the calendar year limitation is not applicable. However, mangrove trimming during colder temperatures risks damage to the mangrove. Mangrove defoliation and alteration restrictions will be strictly enforced.
9. In the Mangrove Hedge Trimming area, no mangrove may be trimmed so that the overall height is reduced to less than ten (10) feet as measured from the substrate, pursuant to the Conservation Easement (Book 22178 Page 474-484).
10. All species listed as nuisance or invasive plant species by Florida Statute or the Florida Administrative Code within 25 feet of the mangrove canopy to be trimmed must be removed from the property in accordance with Section 1-14.06(13).
11. Only non-petroleum based lubricants must be used in chainsaws.

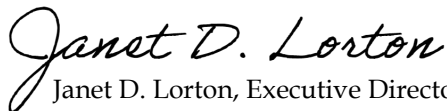
12. The proposed trimming must be supervised or conducted exclusively by a professional mangrove trimmer (PMT) registered with EPC. Mr. Marc Ebling is listed as the PMT on the application. If you do not proceed with this PMT, please refer to the current list of PMT's registered in Hillsborough County that is available online at <http://www.epchc.org/DocumentView.aspx?DID=199> and inform our office of the change.
13. The mangrove trimming noted under this authorization shall be conducted as per the attached site plan and the conditions herein.
14. A separate EPC Miscellaneous Activities in Wetlands (MAIW) permit is required for the removal of certain ornamental vegetation from the project area and can be found at [MAIW20 - Misc. Activities in Wetlands \(formsite.com\)](#). Replanting of other desirable native vegetation is required to compensate. Please include the vegetation species proposed for removal on the site plan and provide a detailed replanting scheme with the application.

General Comments/ Conditions:

- This applies only to the development proposal as submitted, and in no way does it provide EPC approval to any other aspect of the EPC review process. In addition, this approval does not imply exemption from obtaining all proper permits from other governmental agencies.
- The subject authorization applies to trimming and not the alteration of any mangroves, pursuant to Chapter 1-14, Mangrove Trimming and Preservation, Rules of the EPC. Alteration involves the removal, destruction or defoliation of mangroves or the cutting of prop roots and pneumatophores. Any alteration resulting from the proposed activity would be a violation of Chapter 1-14, Rules of the EPC, and may result in enforcement action by the EPC.
- No herbicide or other chemical shall be used to remove mangrove foliage.
- Please note that the Authorization does not allow for the deposition of trimmed branches and trunks within the wetlands or waters of Hillsborough County. All such trimmed materials must be deposited within an acceptable upland location.

Thank you for your cooperation. If you require additional information, please contact Jackie Perry Cahanin at cahaninj@epchc.org or at (813) 627-2600, extension 1241.

Sincerely,



Janet D. Lorton, Executive Director
Environmental Protection Commission
of Hillsborough County

Attachment: Approved Site Maps

cc: Chuck Cavaretta, Park Square Enterprises, LLC, ccavaretta@parksquarehomes.com

Marc Ebling, Suncoast Environmental Group, marc@suncoasteg.com

jpc/kmt

NOTICE OF RIGHTS

Pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, (EPC Act) and Rule 1-2.30, Rules of the Environmental Protection Commission of Hillsborough County (EPC) 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 agency action/decision. **Written Notice of Appeal for a Section 9 Administrative Hearing must be received by the EPC Commission Chair, c/o EPC Legal Department, 3629 Queen Palm Dr., Tampa, Florida 33619 or via electronic mail at legalclerk@epchc.org or via facsimile at (813) 627-2602, within twenty (20) days of receipt of this notice.** Pursuant to Section 1-2.30(c), Rules of the EPC, a Notice of Appeal 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.

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 include a statement when and how the Appellant received notice of the agency decision and a statement why good cause exists for the extension. The Request must be sent to and received by the EPC Legal Department at the address, e-mail, or fax noted above within twenty (20) calendar days of receipt of this notice.

By submitting a "Notice of Appeal" or a "Request for Extension of Time to file a Notice of Appeal" via e-mail, you are agreeing to service and receipt of correspondences via e-mail at the originating e-mail address identified in the e-mail submission.

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 twenty (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.

It is recommended that the Applicant publish at their own expense the following notice of this agency action 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. It is also **RECOMMENDED THAT NO WORK** authorized by this action occur until after the time period for challenging this decision has expired:

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
NOTICE OF AGENCY ACTION





The Environmental Protection Commission of Hillsborough County gives notice of agency action of issuance of an Other Trimming and Alteration of Mangroves Authorization to Park Square Enterprises, LLC pursuant to Chapter 84-446, Laws of Florida, as amended and Chapter 1-14, Rules of the EPC and issued on March 4, 2022. The Authorization addresses approval for greater percentage than the area that was previously approved with a government environmental regulatory permit located at Tides Place, Apollo Beach, FL, folio #054191-1128. The agency action document/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 the decision in accordance with Part IV of Rule 1-2, Rules of the EPC which will be found within the "Notice of Rights" included with the issued document. Written notice of appeal must be received by the EPC Commission Chair, c/o EPC Legal Department, 3629 Queen Palm Dr., Tampa, Florida 33619 or via electronic mail at legalclerk@epchc.org or via facsimile at (813) 627-2602, within 20 days of the date of this publication. Failure to file a notice of appeal within that time shall constitute a WAIVER of one's right to file an appeal.

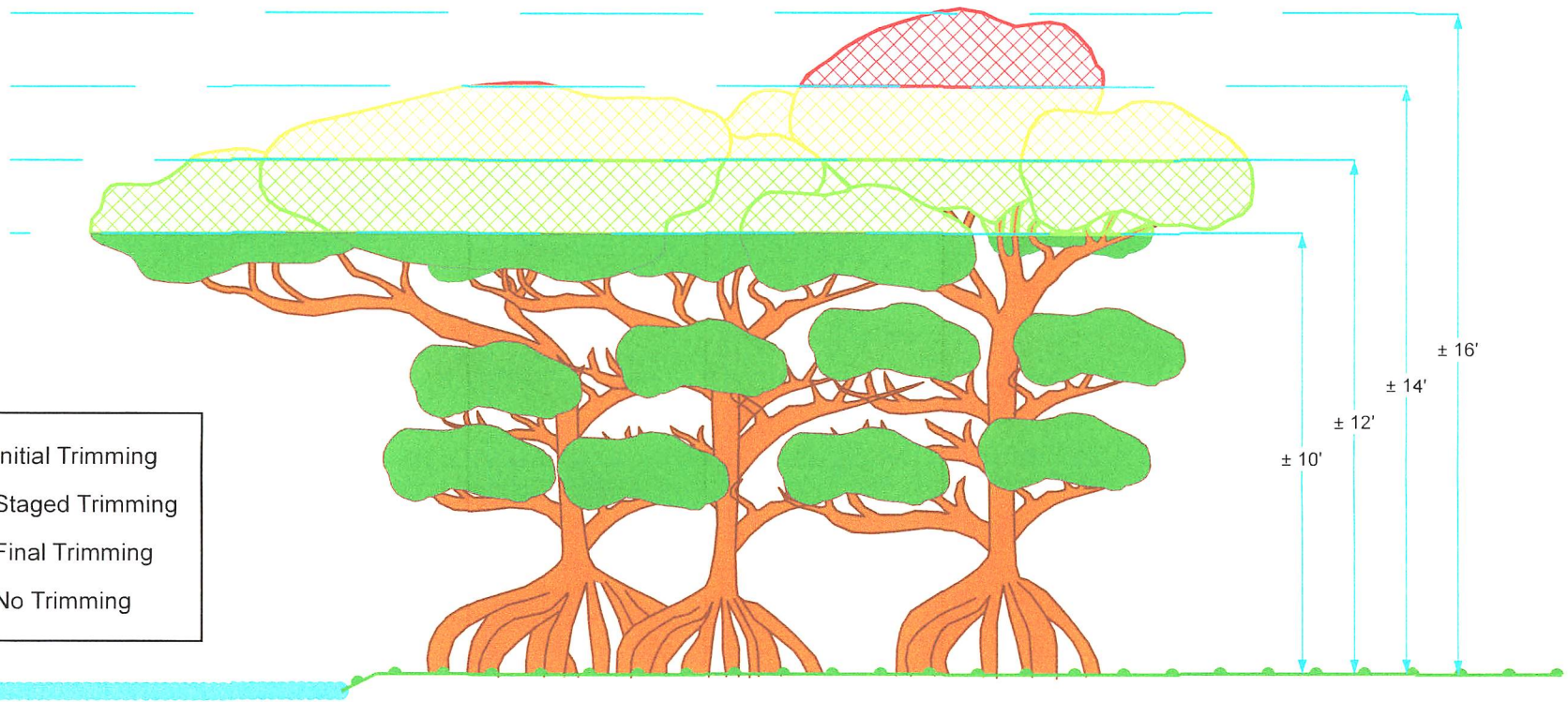
Upon receipt of a sufficient Notice of Appeal for a Section 9 Administrative Hearing an independent hearing officer will be assigned. The hearing officer will schedule the appeal hearing at the earliest reasonable date. Following an evidentiary hearing, the hearing officer will render his/her decision as a recommendation before the EPC. Pursuant to Section 1-2.35, Rules of the EPC, the EPC 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, 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 EPC.


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.

Mira Bay: Preserve M-1
Mangrove Trimming and Exotic Removal



-  Hedge mangroves as height allows (0.62 ac)
-  Window mangroves (0.36 ac)
-  No trim area (0.23 ac)
-  Exotic removal only (0.50 ac)



-  Initial Trimming
-  Staged Trimming
-  Final Trimming
-  No Trimming

- Note:
1. Total mangrove topping area is approximately 0.62 Ac
 2. No more than 25% of foliage will be removed annually per tree.
 3. No mangroves will be trimmed below 10' as measured from the substrate
 4. No mangroves will be killed or defoliated as a result of trimming
 5. All cut material will be removed by hand to an offsite upland location for disposal.

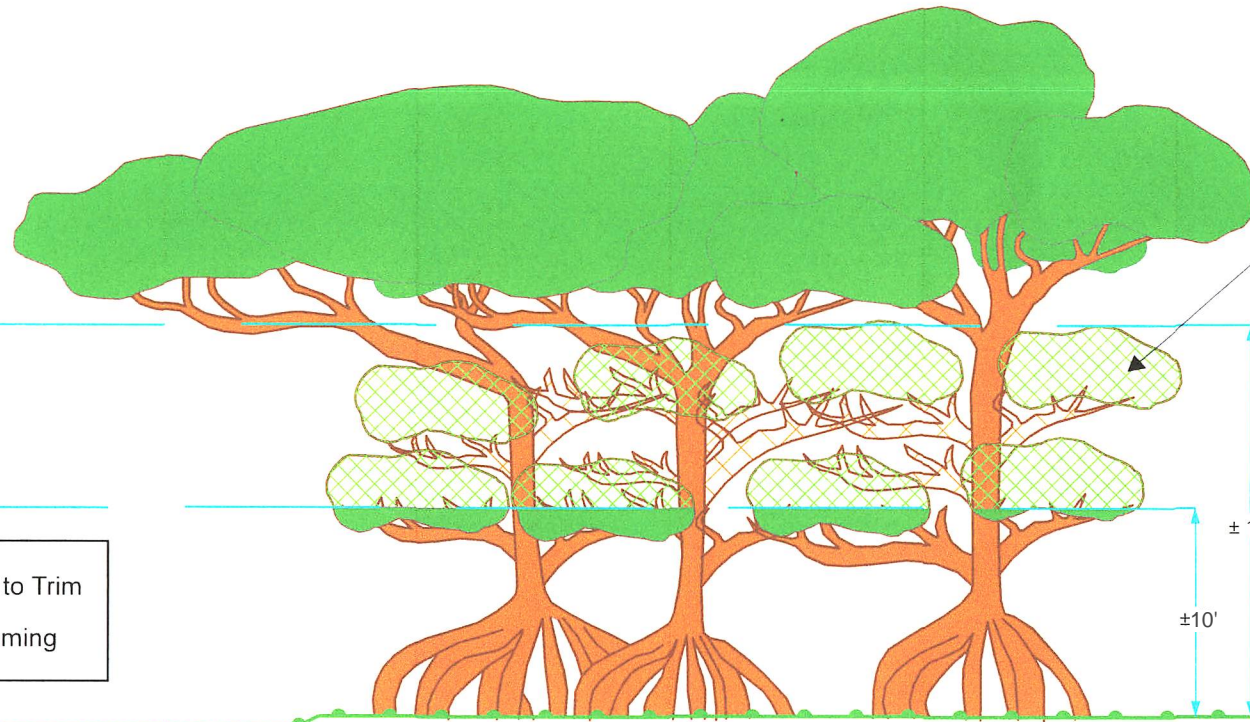
MiraBay
Apollo Beach, Florida



EARTH TECH ENVIRONMENTAL, LLC
10600 JOLEA AVENUE
BONITA SPRINGS, FLORIDA 34135
PHONE (239) 304-0030 FAX (239) 324-0054



Typical Height Reduction Trimming Cross Section			
SHEET NO. 1	DATE 7/3/2019	PROJECT NO. ---	SCALE AS SHOWN



Mangrove branches to be trimmed between 10'-15' as measured from the substrate to create view / window corridors

± 15'

± 10'

	Foliage to Trim
	No Trimming

- Note:
1. Total mangrove window area is approximately 0.36 Ac
 2. No more than 25% of foliage will be removed annually per tree.
 3. No mangroves will be trimmed below 10' as measured from the substrate
 4. No mangroves will be killed or defoliated as a result of trimming
 5. All cut material will be removed by hand to an offsite upland location for disposal.

MiraBay
Apollo Beach, Florida



EARTH TECH ENVIRONMENTAL, LLC
10600 JOLEA AVENUE
BONITA SPRINGS, FLORIDA 34135
PHONE (239) 304-0030 FAX (239) 324-0054



Typical View Window
Trimming Cross Section

SHEET NO. 1	DATE 7/3/2019	PROJECT NO. ---	SCALE AS SHOWN
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Amended Notice of Appeal - EPC Case No22-EPC-006
Appellants Lenore L. Krentz and Kenneth B. Goodwin

June 15, 2022

Pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida (EPC Act) and Rule 1-2.30, Rules of the Environmental Protection Commission of Hillsborough County (EPC), we are submitting this Amended Notice of Appeal for a Section 9 Administrative Hearing.

Pursuant to Section 1-2.30, Rules of the EPC, see the below for the required information to include in this Amended Notice of Appeal.

- 1) We the Appellants are Lenore L. Krentz and Kenneth B. Goodwin, residing at 5613 Seagrass Place, Apollo Beach, FL 33572. We are aggrieved by the decision of the Executive Director in the following manner.
 1. We will be immediately deprived of peaceful enjoyment of our property.
 2. We are concerned about the disruption and loss of wildlife habitat and distress caused by the Proposed Action to the many species that nest or reside within and around the Conservation Easement.
 3. Our right to rely on a public agency executing decisions and agreements consistent with their stated policies has been abridged. The Proposed Action has no reasonable purpose and conflicts with the stated policies and rules of the Environmental Protection Commission of Hillsborough County. We trust that the actions taken by any branch of the government will follow their own rules and policies and we believe the underlying agreements, specifically the Amended Conservation Easement, allowing the trimming of mangroves in this conservation easement do not adhere to the policies and rules of the Environmental Protection Commission of Hillsborough County.
- 2) We received notice of the agency decision by inquiring directly with the EPCHC after we heard there was to be mangrove trimming. See timeline below.
 1. April 7, 2022 received a one-line group email to all of MiraBay residents from the "MiraBay Club". "Dear Residents, It is our pleasure to announce that mangrove trimming will commence the week of April 18th. Thank you, Staff"
 2. April 8, 2022 I telephoned MiraBay office and they transferred me to a voice mail for the individual they thought would manage the project. I left a voice mail saying I just wanted to confirm that the mangrove trimming was NOT happening on the canal behind our home and to please call me back to confirm. I heard nothing.
 3. April 14, 2022 I called MiraBay office again and they transferred me to an individual who said the canal behind our home was the ONLY place in MiraBay where mangrove trimming was going to occur but since they hadn't pulled the permit they couldn't help me. They suggested I call the State of Florida EPA.
 4. April 15, 2022 I discovered from the State of Florida EPA website that Hillsborough County Environmental Protection Commission was responsible for issuing permits for Mangrove trimming. I called the EPCHC and spoke

June 15, 2022

with Clint Shockley in the Wetlands division. Clint pulled the permit and sent it to me.

- 3) There are no disputed issues of material fact.
- 4) Facts that warrant reversal or modification of the Executive Director's proposed action.
 - a) The proposed action is the Other Trimming of Mangroves Authorization in a Conservation Easement.
 - b) The original Conservation Easement was dated December 9, 2004, and recorded on December 13, 2004 in the Public Records of Hillsborough County, Florida at O BK 14491 pg. 1164. An Amended Conservation Easement was given and replaced the original CE on September 6, 2013, and recorded on October 2, 2013 in the Public Records of Hillsborough County, Florida at O BK 22178 pg. 474-484. The Amended Conservation Easement modified the Prohibited Uses to allow for limited trimming mangroves and the maintenance or removal of invasive exotic plant species in accordance with a plan approved by the EPC.
 - c) The Item 10 of the Other Trimming of Mangroves Authorization has already been completed as the nuisance or invasive plant species were removed from the Conservation Area in May 2022. The area is a mess where the vegetation was removed and no plan exists to replace it or fill in the large vacant spaces – the trim plan estimated the exotic removal area to be 0.5 acres.
 - d) Wildlife that has been identified inhabiting or frequenting the Conservation Area and the waterway that flows through the mangroves and/or abuts the area include the following: dolphins, manatees, snook, catfish, mullet, redfish, jacks, mangrove snapper, baitfish, stingrays, bald eagles, falcons, osprey, pink spoonbill, anhinga, egrets, herons, rabbits, fox, raccoon, possum and bats.
 - e) The Uniform Mitigation Assessment did not note any observation of wildlife in the Conservation Easement area. There was no other wildlife impact study done.
 - f) It is the policy of the State of Florida and the Environmental Protection Commission to preserve the essential character of wetland property. The owner of wetlands has no right to use them for a purpose for which they are unsuited in their natural state.
 - g) It is the priority of the Environmental Protection Commission to avoid the disturbance of wetlands in the County and to encourage their use only for purposes which are compatible with their natural functions and the environmental benefits. It is the intent of the Commission that development requiring mitigation be a last resort used only when reasonable use of the property is otherwise unavailable.
 - h) The Amended Conservation Easement, Item 1 states “the purpose of the Amended Conservation Easement is to retain land or water areas in the their natural, vegetative, hydrologic, scenic, open, agricultural or wood condition

June 15, 2022

- to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland or upland areas included in the Conservation Easement which were enhanced, created and/or mitigated pursuant to the Mitigation Agreement shall be retained in the enhanced, created and/or mitigated conditions required by the Mitigation Agreement.
- i) There are three duplex buildings that back to the Conservation Area that set back approximately 20 feet to the east. There is a sidewalk between the duplexes and the Conservation Easement. The owners of the Duplexes do not own the Conservation Easement area and there are no riparian rights attached to these properties.
 - j) There is a conveyance agreement between Park Square Enterprises, LLC (the owner of the Conservation Easement area) and Harbor Bay Community Development District (CDD). On October 5, 2021 Park Square and the CDD executed Addendum Number Two to Agreement Regarding the Acquisition of Certain Work Product and Improvements. This agreement specifically set the trimming of the mangroves as a condition to convey this parcel of land.
 - k) The trimming of mangroves on a Conservation Easement for the purpose of conveying ownership of the land is not an acceptable reason to trim the mangroves under the rules and policies of the Environmental Protection Commission of Hillsborough County.
 - l) Pursuant to Chapter 1-14.04 "Where a pattern of trimming has stopped such that the use intended or obtained by the trimming has been broken or lost for a sustained period of time, further trimming will not be considered maintenance."
 - m) The trimming under Proposed Action cannot be considered maintenance trimming as evidenced by the height of the mangroves (some 24 feet tall) the trimming pattern has ceased for a sustained period of time.
- 5) Laws or Rule that require reversal or modification of the Executive Director's proposed action are:
1. The Proposed Action is subject to the application of Chapter 1-11. Chapter 1-11.11(2)(d) "These exemptions do not apply to wetlands created, enhanced, or restored as mitigation for wetlands or surface water impacts under a permit issued by the Executive Director, DEP, SWFWMD or United States Army Corps of Engineers."
 2. The Proposed Action violates Chapter 1-11.01(1) "It is the policy of the State of Florida and the Environmental Protection Commission to preserve the essential character of wetland property. The owner of wetlands has no right to use them for a purpose for which they are unsuited in their natural state. It shall be the priority of the Environmental Protection Commission to avoid the disturbance of wetlands in the County and to encourage their use only for purposes which are compatible with their natural functions and the environmental benefits. It is the intent of the Commission that development

June 15, 2022

- requiring mitigation be a last resort used only when reasonable use of the property is otherwise unavailable.”
3. The Proposed Action does not comply with Chapter 1-11.10(b) “Nuisance and exotic vegetation removal in wetlands. Phased removal of the vegetation or replanting with wetland desirable species may be necessary to ensure erosion control and/or to ensure the area is adequately re-vegetated.”
 4. The Proposed Action violates the Amended Conservation Easement dated September 6, 2013 Item (1).
 5. The Proposed Action does not qualify as maintenance as allowed under Chapter 1-14.04 Definitions.
- 6) We request the Commission take the following action with respect to the Executive Director’s proposed action.
1. In consideration of the rules and facts noted, we ask that the Commission revoke the Other Trimming of Mangroves Authorization in its entirety.
 2. We ask that the Commission require the replanting of the upland area, where the invasive vegetation was removed, with wetland or native desirable species as is necessary to ensure erosion control and to ensure the area is adequately re-vegetated.

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

LENORE KRENTZ and KENNETH GOODWIN,

Appellants,

vs.

EPC Case No. 22-EPC-006

**PARK SQUARE ENTERPRISES, LLC and
ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY,**

Appellees.

**PARK SQUARE ENTERPRISES, LLC and ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY'S JOINT MOTION
FOR SUMMARY RECOMMENDED ORDER**

Appellee Park Square Enterprises, LLC (Appellee Park Square or Park Square) and Appellee Environmental Protection Commission of Hillsborough County (EPC), by and through their undersigned counsel, pursuant to Rule 1-2.32(i), Rules of the EPC, hereby moves the assigned Hearing Officer to enter a Summary Recommended Order on the grounds that there are no genuine issues as to any material fact and the Appellees are entitled to a Recommended Order upholding the Mangrove Permit based on the application and interpretation of the Chapter 1-14, Rules of the EPC, Section 1-11.08, Rules of the EPC (Wetlands Rule - Mitigation), Section 62-345,F.A.C., and the Appellants having not stated any claim for relief that the EPC can afford under the EPC Act and Rules. Pursuant to Section 1-2.32, Appellants were contacted by EPC to confer on the motion and EPC has not received a return contact from Appellants. In support thereof the EPC states the following:

ATTACHMENT 4

PRELIMINARY STATEMENT

On November 17, 2021, the Appellee Park Square submitted to the EPC Executive Director an Application for Mangrove Trimming Permit (Trimming Application) for the purpose of window and stage trimming the riparian mangrove fringe located along the shoreline to the west of property located west of residences on Golden Isles Drive within the Mira Bay residential neighborhood off of State Highway 41 in Hillsborough County, Florida. The EPC reviewed the application under Chapter 1-14, Rules of the EPC (Mangrove Trimming and Preservation) and limited application of Chapter 1-11, Rules of the EPC (Wetland Rules), specifically, Section 1-11.08 regarding the appropriate the mitigation to offset the trimming. The EPC Executive Director issued a “Other Trimming of Mangroves Authorization” (Mangrove Permit) pursuant to Section 1-14.07, Rules of the EPC, on March 4, 2022. An Amended Notice of Appeal (Amended Appeal) was submitted by Kenneth Goodwin and Lenore Krentz, the Appellants, on May 20, 2022.

STATEMENT OF CONTROVERSY

The issue to be determined in this Motion is whether there are no genuine issues as to any material fact and that Appellees are entitled to a judgement as a matter of law. Appellees assert that the Motion should be granted because there are no genuine issues as to any material fact and the legal interpretations made by the Appellants are not in accordance with the application and interpretations of EPC Act and rules. The Executive Director of the EPC authorized stage trimming and window trimming of riparian mangroves to Appellee Park Square under a Mangrove Permit pursuant to Section 1-14.07, Rules of the EPC. Appellants contend 1) that the authorization is not in accordance with the stated policies and rules of the EPC; 2) the proposed mangrove trimming does not appropriately consider existing wildlife by the failing to specifically include a wildlife

impact study; and 3) the proposed mangrove trimming is in violation with the existing conservation easement over the property.

Under Chapter 1-14, Rules of the EPC, there are three levels of mangrove trimming: noticed exemptions, mangrove trimming permits, and mangrove other trimming and alteration permits. This Mangrove Permit was authorized under Section 1-14.07, “Mangrove Other Trimming and Alteration” which requires limited application of the EPC Wetlands Rule, Chapter 1-11, depending on whether alteration of the mangrove fringe is proposed. Alteration is defined by Section 1-14.04, in its simple form “alter” as “anything other than trimming of mangroves including removal, destruction or defoliation of mangroves or the cutting of prop roots and pneumatophores.” Here, neither the Trimming Application nor the Mangrove Permit authorize alteration of the riparian mangrove fringe. Further, the Appellants, in their discovery response admitted that alteration is not authorized by the permit. Therefore, pursuant to Section 1-14.07(d), Rules of the EPC, only Section 1-11.08, regarding the mitigation requirement to offset the trimming, is applicable.

Regarding Appellants claim that a wildlife study was not conducted, the consideration of wildlife during a Mangrove Permit application review is pursuant to Section 62-345, F.A.C., the Uniform Mitigation Assessment Method (UMAM) which determines the appropriate amount of mitigation required to offset adverse impacts and deduct mitigation bank credits. The UMAM provides a standardized procedure for assessing the functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss. The UMAM includes considerations for wildlife based on observations and literature review. The UMAM assessment provided was confirmed by EPC staff in the field and the UMAM indicated that “no listed species or associated signs were

observed.” Further, UMAM regulations do not require a formal wildlife impact study or survey and Appellants state they do not dispute the UMAM score submitted by the applicant. Thus, inclusion of a wildlife study or consideration of additional species observed is not a requirement under applicable regulations. Additionally, the fact a wildlife study was not done is not a material issue in dispute and would not affect the proposed mangrove trimming, but only the amount of mitigation required.

Lastly, Appellants contend that the mangrove trimming is not in accordance with an existing conservation easement over the mangrove fringe. The pertinent conservation easement executed September 6, 2013 and recorded on October 2, 2013, allows for “limited trimming of mangroves...in accordance with Chapter 1-14, Rules of the EPC and such mangrove trimming will not result in mangrove being reduced to less than ten (10) feet in height” in paragraph 3.c. Appellants contend paragraph 1 of the conservation easement supersedes the specific language contained in paragraph 3. Basic contract interpretation principles indicate that a more specific provision, here, the allowance for mangrove trimming, controls over a more general provision, the purpose to maintain conservation areas in their natural state.

The interpretations made by Appellants are not consistent with the application and plain language of Chapter 1-11, Chapter, 1-14, Section 62-345, F.A.C., and the Conservation Easement. Therefore, the relief sought by Appellate cannot be provided under this Amended Appeal and this Motion for Summary Recommended Order must be GRANTED.

FINDING OF UNDISPUTED FACTS

For the purposes of this Motion, Appellees find the following facts as undisputed:

1. The subject property is identified by Folio #054191-1128, located west of Golden Isles Drive, Apollo Beach, FL, 33572, with no physical address (hereinafter “the Project

- Site”). *See Hillsborough County Property Appraiser records attached hereto as Exhibit 1.*
2. Appellants own upland property located across the canal from the Project Site, identified by Folio #052664-2670, with a physical address of 5613 Seagrass Place, Apollo Beach, FL 33572 (hereinafter “the Appellants Property”). *See Hillsborough County Property Appraiser records attached hereto as Exhibit 2.*
 3. On November 17, 2021, Appellee Park Square submitted an Application for Mangrove Trimming Permit and subsequent request for additional information response (Trimming Application), to EPC under Review No. 68100, for the trimming of riparian mangroves along the Project Site. *See Trimming Application attached hereto as Exhibit 3.*
 4. The application proposed “[t]rimming pursuant to section 1-14.07, Rules of the EPC. Proposed trimming which exceeds the criteria within section 1-14.06. Must not be contrary to the public interest as provided in section 1-14.07, including cumulative impacts, and will require compensation pursuant to Chapter 1-11.08, Wetlands, Rules of the EPC.” *See Exhibit 3, page 4.*
 5. The application was reviewed, and a Mangrove Permit was issued to Appellee Park Square on March 4, 2022. *See Mangrove Permit, attached hereto as Exhibit 4.*
 6. Appellants filed a Notice of Appeal on May 20, 2022, in this matter. The Notice of Appeal was dismissed with leave to amend, and the Appellants filed an Amended Notice of Appeal on June 15, 2022. *See Appellants’ Amended Notice of Appeal attached hereto as Exhibit 5.*
 7. In their Amended Notice of Appeal, the Appellants assert there are no disputed issues of material fact. *See Exhibit 5, page 2, paragraph 3.*

8. “The proposed action is the Other Trimming of Mangroves Authorization in a Conservation Easement.” *See Exhibit 5, page 2, paragraph 4)a) and Exhibit 7.*
9. “The original Conservation Easement was dated December 9, 2004, and recorded on December 13, 2004 in the Public Records of Hillsborough County, Florida at O BK 14491 pg. 1164. An Amended Conservation Easement was given and replaced the original CE on September 6, 2013, and recorded on October 2, 2013 in the Public Records of Hillsborough County, Florida at O BK 22178 pg. 474-484. The Amended Conservation Easement modified the Prohibited Uses to allow for limited trimming mangroves and the maintenance or removal of invasive exotic plant species in accordance with a plan approved by the EPC.” *See Exhibit 5, page 2, paragraph 4)b) and Exhibit 7.*
10. “The Item 10 of the Other Trimming of Mangroves Authorization has already been completed as the nuisance or invasive plant species were removed from the Conservation Area in May 2022. The area is a mess where the vegetation was removed and no plan exists to replace it or fill in the large vacant spaces – the trim plan estimated the exotic removal area to be 0.5 acres.” *See Exhibit 5, page 2, paragraph 4)c).*
11. “Wildlife that has been identified inhabiting or frequenting the Conservation Area and the waterway that flows through the mangroves and/or abuts the area include the following: dolphins, manatees, snook, catfish, mullet, redfish, jacks, mangrove snapper, baitfish, stingrays, bald eagles, falcons, osprey, pink spoonbill, anhinga, egrets, herons, rabbits, fox, raccoon, possum and bats.” *See Exhibit 5, page 2, paragraph 4)d).*
12. “The Uniform Mitigation Assessment did not note any observation of wildlife in the Conservation Easement area. There was no other wildlife impact study done.” *See Exhibit 5, page 2, paragraph 4)e).*

13. “It is the policy of the State of Florida and the Environmental Protection Commission to preserve the essential character of wetland property. The owner of wetlands has no right to use them for a purpose for which they are unsuited in their natural state.” *See Exhibit 5, page 2, paragraph 4)f), Appellants citing to Section 1-11.01, Rules of the EPC.*
14. “It is the priority of the Environmental Protection Commission to avoid the disturbance of wetlands in the County and to encourage their use only for purposes which are compatible with their natural functions and the environmental benefits. It is the intent of the Commission that development requiring mitigation be a last resort used only when reasonable use of the property is otherwise unavailable. *See Exhibit 5, page 2, paragraph 4)g), Appellants citing to Section 1-11.01, Rules of the EPC.*
15. “The Amended Conservation Easement, Item 1 states ‘the purpose of the Amended Conservation Easement is to retain land or water areas in the their natural, vegetative, hydrologic, scenic, open, agricultural or wood condition [and] to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland or upland areas included in the Conservation Easement which were enhanced, created and/or mitigated pursuant to the Mitigation Agreement shall be retained in the enhanced, created and/or mitigated conditions required by the Mitigation Agreement.’” *See Exhibit 5, page 2, paragraph 4)h) and Exhibit 7.*
16. “Pursuant to Chapter 1-14.04 ‘Where a pattern of trimming has stopped such that the use intended or obtained by the trimming has been broken or lost for a sustained period of time, further trimming will not be considered maintenance.’” *See Exhibit 5, page 2, paragraph 4)l).*

17. “The trimming under [Mangrove Permit] cannot be considered maintenance trimming as evidenced by the height of the mangroves (some 24 feet tall) the trimming pattern has ceased for a sustained period of time.” *See Exhibit 5, page 2, paragraph 4)m).*
18. Re-vegetation in the exotic and invasive removal area on the Project Site has started to occur naturally. *See Exhibit 6, Appellants’ response to Interrogatories paragraph 9.b., (page 6 of 10).*
19. Neither “alter” as defined by Chapter 1-14, Rules of the EPC, nor “alteration” is authorized under the Mangrove Permit. *See Exhibit 6, Appellants’ response to Requests for Admissions, paragraph 1.a., (page 8 of 10), and Exhibit 4, page 3 of 5, General Comments/Conditions, second bullet point.*
20. Appellants do not dispute the UMAM score. *See Exhibit 6, Appellants’ response to Requests for Admissions, paragraph 4., (page 8 of 10).*

MEMORANDUM OF LAW

This case involves a Mangrove Permit that was issued by the Executive Director on March 4, 2022, for the stage trimming and window trimming of a riparian mangrove fringe. The Appellants primarily raise the following issues in their Notice of Appeal: 1) the Mangrove Permit is not authorized in accordance with the stated policies and rules of the EPC; 2) the proposed mangrove trimming does not appropriately consider existing wildlife by the failing to include a wildlife impact study; and 3) the proposed mangrove trimming is in violation with the existing conservation easement over the property. The rule interpretations made by Appellants are misplaced or inaccurate and not in accordance with the plain language of EPC rules nor are consistent with basic statutory interpretation and contract interpretation principles. Therefore, EPC

respectfully requests the Hearing Officer GRANT this Motion because the relief sought by Appellants is not afforded to them under the EPC Act and rules.

I. Chapter 1-14, Mangrove Trimming and Preservation.

As briefly introduced above, there are three levels of mangrove trimming under Chapter 1-14, Rules of the EPC: noticed exemptions, mangrove trimming permits, and mangrove other trimming and alteration permits. Noticed exemptions are reviewed under Section 1-14.05 and allow for trimming of mangroves to 6 feet and other maintenance trimming of mangroves under the height of 24 feet. Mangrove trimming permits pursuant to Section 1-14.06 are for those projects that do not meet the exemption criteria under Section 1-14.05 and among other things, are limited to 33% of the drip line area (footprint) of mangroves eligible for trimming. Appellee Park Square's Trimming Application exceeded the criteria under Section 1-14.05 and Section 1-14.06 because there are mangroves on the Project Site that exceed 24 feet in height and the area to be trimmed exceeds 33% of the eligible trimming area. *See Exhibit 3.* Therefore, the "Other Trimming and Alteration of Mangroves" permit requirements under Section 1-14.07 are applicable to this Trimming Application review.

Tangentially, the Appellants contend that the trimming authorized under the Mangrove Permit does not meet the definition of "maintenance." *See Exhibit 5.* Appellees Park Square and EPC do not dispute this definition or that statement because the proposed trimming is not maintenance. The full definition of maintenance under Section 1-14.04(e) is "trimming intended to maintain the height and configuration of a mangrove area that was legally trimmed either pursuant to a valid exemption or a previously issued permit from the appropriate governmental agency. However, where a pattern of trimming has stopped such that the use intended or obtained by the trimming has been broken or lost for a sustained period of time, further trimming

will not be considered maintenance.” Appellees do not dispute that the trimming under the Mangrove Permit is not maintenance, therefore this is not a genuine issue of material fact and the rule language cited is inapplicable to the new trimming activity permitted under Section 1-14.07, Rules of the EPC.

a. Application of Chapter 1-11 under Section 1-14.07, Rules of the EPC

The criteria considered by the Executive Director when determining whether the Mangrove Permit may be issued are found in Section 1-14.07, Rules of the EPC.

Section 1-14.07 OTHER TRIMMING AND ALTERATION OF MANGROVES; PERMIT REQUIREMENT

(a) The Executive Director, when deciding to issue or deny a permit for mangrove trimming that exceeds the requirements set forth in sections 1-14.05 and 1-14.06, Rules of the Commission or mangrove alteration under this section, shall use the criteria in section 373.414(1) and (8), F.S., as follows: (1) Whether the activity will adversely affect the public health, safety, or welfare or the property of others; (2) Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats; (3) Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling; (4) Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity; (5) Whether the activity will be of a temporary or permanent nature; (6) Whether the activity will adversely affect archaeological resources under the provisions of section 267.061, F.S.; (7) The current condition and relative value of functions being performed by areas affected by the proposed activity; and (8) The cumulative impact of similar activities pursuant to section 373.414(8), F.S..

(b) If the applicant is unable to meet these criteria, the Executive Director and the applicant shall first consider measures to reduce or eliminate the unpermittable impacts. If unpermittable impacts still remain, the applicant may propose, and the Executive Director shall consider, measures to mitigate the otherwise unpermittable impacts.

(c) The request must be made with sufficient specificity to enable the Executive Director to determine the scope and impacts of the proposed alteration activities.

(d) A request for a permit for trimming that exceeds the requirements set forth in sections 1-14.05 and 1-14.06, Rules of the Commission shall be reviewed pursuant to Section 1-11.08, Rules of the Commission and this rule chapter.

(e) A request for a permit for the alteration of mangroves will be reviewed pursuant to both the entire chapter 1-11, Rules of the Commission and this rule chapter.

(f) The use of herbicides or other chemicals for the purposes of removing leaves from a mangrove is strictly prohibited.

(emphasis added)

Section 1-14.07(d), Rules of the EPC, state that if a request for a permit for trimming exceeds the requirements of the Noticed Exemption (Section 1-14.05) and that of a standard mangrove trim permit (Section 1-14.06), all mangrove trimming applications under this section require mitigation as determined under Section 1-11.08, Rules of the EPC. Further the application of Chapter 1-11 in its entirety, is required where alteration of mangroves is proposed under a mangrove trimming application review, per the plain reading of Section 1-14.07(e), Rules of the EPC. This is because, where alteration is proposed, an applicant must show that the impact is required for the reasonable use of the property, under Chapter 1-11 criteria.

In the Amended Notice of Appeal, Appellants state that certain portions of Chapter 1-11, Rules of the EPC, require reversal of the Mangrove Permit. Specifically, Appellants contend the Mangrove Permit does not comply with Sections 1-11.11(2)(d), 1-11.01(1), and 1-11.10(b), Rules of the EPC. See *Exhibit 5 paragraph 5, items 1 through 3*. As stated above, Section 1-14.07 specifies when Chapter 1-11 provisions are applicable to a mangrove trimming application review and this comes down to whether alteration is proposed, or the trimming application proposes to “alter” mangroves as defined in Section 1-14.04(a). The Appellants have admitted

that the Mangrove Permit does not authorize “alter.” *See Exhibit 6*. Section 1-14.04(a), Rules of the EPC, defines “alter” as “anything other than trimming of mangroves including removal, destruction or defoliation of mangroves or the cutting of prop roots and pneumatophores.” In this same response, the Appellants attempt to distinguish between “alteration” and “alter” but there is no distinction under Chapter 1-14 language and the definition of alter applies when alteration is used under this rule.

Under Florida law, “the plain meaning of the statute is always the starting point in statutory interpretation.” *GTC, Inc. v. Edgar*, 967 So.2d 781, 785 (Fla. 2007). “[I]f the meaning of the statute is clear then this Court's task goes no further than applying the plain language of the statute.” *Id.* “However, if the language is unclear or ambiguous, then the Court applies rules of statutory construction to discern legislative intent.” *Polite v. State*, 973 So.2d 1107, 1111 (Fla. 2007). Because the plain meaning of the rule language requires application of Chapter 1-11 only when alteration is proposed and Appellants have admitted that the Mangrove Permit does not authorize “alter,” Chapter 1-11 concepts *in their entirety* are not appropriately considered under a mangrove trimming application pursuant to Section 1-14.07, Rules of the EPC, only Section 1-11.08 regarding mitigation is appropriately applicable. Therefore, the Appellants’ citation to these intents, policies, and standards are inapplicable and the relief requested pursuant to those arguments cannot be granted.

Lastly, the Appellants state as a fact that warrants reversal that the nuisance and exotic vegetation removal has occurred at the Project Site, leaving the area a “mess.” *See Exhibit 5, page 2, paragraph 4)c*). While not a material fact and Appellees Park Square and EPC cannot confirm the subjective condition of the site described by Appellants, the Appellee Park Square appropriately removed vegetation upon issuance of the Mangrove Permit (March 4, 2022), prior

to EPC's receipt of Appellants' initial extension of time request (April 15, 2022), which halted the finality of the authorization. Further, Appellees Park Square and EPC do not dispute that the Mangrove Permit did not require replanting in the nuisance and exotic removal area. Section 1-11.10(b) only as applicable to the removal of nuisance and exotic vegetation states, "[p]hased removal of vegetation *or* replanting with wetlands desirable species *may be necessary to ensure erosion control and / or to ensure the area is adequately revegetated*" (emphasis added). This conditional language does not mandate the replanting of a site as requested by Appellants and Appellants have stated natural re-vegetation has occurred since the removal. *See Exhibit 5, paragraph 6)2. and Exhibit 6, page 6 of 10, paragraph 9.b.* Therefore, the Appellants have not sufficiently stated a claim for the relief requested in the Amended Appeal.

b. Reasonable Assurance

Appellee Park Square's burden is one of reasonable assurance that its project will comply with the applicable rules. *See Ogden v Truex and EPC*, (EPC Final Order June 22,2015). This burden is one of "reasonable assurances, not absolute guarantees." *See Manasota-88, Inc., v. Agrico Chemical*, 12 F.A.L.R. 1319, 1325 (DER 1990). Reasonable assurance contemplates "a substantial likelihood that the project will be successfully implemented." *Metropolitan Dade County v. Coscan Florida, Inc.*, 609 So. 2d 644, 648 (Fla. Dist. Ct. App. 1992).

Appellants state in their Amended Appeal as a fact warranting reversal that "[t]he trimming of mangroves on a Conservation Easement for the purpose of conveying ownership of the land is not an acceptable reason to trim the mangroves under the rules and policies of the Environmental Protection Commission of Hillsborough County." *See Exhibit 5, page 2, paragraph 4)k).* While Appellees Park Square and EPC do not agree with this fact, it is not a material issue in dispute. For the sake of argument, Chapter 1-14, Rules of the EPC, does not

require a showing of “reasons” to allow mangrove trimming, conversely, Section 1-14.02(d) states “it is the intent of the Commission to also allow mangrove trimming at waterfront properties with mangroves where such trimming can be done consistent with the specific criteria of the Commission.” As explained previously, the specific criteria applicable to this level of mangrove trimming is contained in Section 1-14.07, Rules of the EPC. By issuance of the Mangrove Permit, it is EPC’s position that Appellee Park Square has provided reasonable assurance that the proposed stage and window trimming meet the applicable criteria.

II. Uniform Mitigation Assessment Method (UMAM)

Recall, the UMAM provides a standardized procedure for assessing the functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact (“functional loss”), and the amount of mitigation necessary to offset that loss. *See Section 62-345.100(2), F.A.C.* There are seven factors used to determine the value of the functions provided by the wetland and to assess the loss of those functions by an impact: 1) current condition; 2) hydrologic connection; 3) uniqueness; 4) location; 5) fish and wildlife utilization; 6) time lag; and 7) mitigation risk. *See Section 62-345.300(2), F.A.C.* The factors are applied to the “assessment area” (“all or part of a wetland or surface water impact site,” 62-345.200(1), F.A.C.) to determine the UMAM functional loss. An adjustment of one of these factors which increases the functions provided by a wetland prior to impact would only increase the required mitigation.

Appellants contend the Mangrove Permit warrants reversal because the UMAM did not specifically state all wildlife the Appellants have observed near, adjacent, or on the Project Site and that no wildlife impact study has been done. *See Exhibit 5.* While the UMAM documentation submitted to EPC indicated there were no observations of *listed* species (i.e. endangered,

threatened, species of special concern), the UMAM documentation stated that based on literature review, “small mammals, reptiles, amphibians, fish, mollusks, and insects” are anticipated to utilize the Project Site. *See Exhibit 3.* Section 62-345.400(8), F.A.C., states “the [wildlife] list developed for the assessment area need not include all species which use the area, but must include all listed species in addition to those species that are characteristic of the native community type, considering the size and geographic location of the assessment area. *Generally, wildlife surveys will not be required*” (emphasis added). As the UMAM documentation incorporated anticipated utilization of similar animal types to those identified by Appellants, Appellants do not dispute the UMAM score, and UMAM regulations do not require all species to be identified or a wildlife survey. Accordingly, whether the UMAM identified all species allegedly observed by Appellants or whether a wildlife study was conducted, does not warrant reversal of the Mangrove Permit. Assuming *arguendo* the UMAM scores were adjusted to incorporate all species identified by Appellants and to increase the functional loss of the mangrove trimming, the proposed window and stage trimming under the Mangrove Permit would not be affected, but only the mitigation credit requirements of Appellee Park Square would increase.

III. Conservation Easement

Appellees also contends that “[t]he Proposed Action violates the Amended Conservation Easement dated September 6, 2013 Item (1).” *See Exhibit 5, paragraph 5*)4. Paragraph 1 from the Amended Conservation Easement states the general purpose of executing a conservation easement: “the purpose of the Amended Conservation Easement is to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wood condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland or upland areas included

in the Conservation Easement which were enhanced, created and/or mitigated pursuant to the Mitigation Agreement shall be retained in the enhanced, created and/or mitigated conditions required by the Mitigation Agreement.” See Exhibit 7.

This purpose is general compared to the more specific conditions of Paragraph 3 identified below and as applicable to the Mangrove Permit.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Amended Conservation Easement is prohibited. Without limiting the foregoing, the following activities and uses are expressly prohibited (“Prohibited Uses”):

...

c. “Removal or destruction of trees, shrubs, or other vegetation, including the removal, destruction, or alteration of mangroves, except that limited trimming of mangroves shall be allowed in accordance with Chapter 1-14, Rules of the EPC and such mangrove trimming will not result in the mangroves being reduced to less than ten (10) feet in height. Any such mangrove trimming will also require prior written notice be provided to the EPC. In addition, this Amended Conservation Easement shall allow for the maintenance or removal of invasive exotic plant species in accordance with a plan approved by the EPC[.]”

It is a general principle of contract interpretation that a specific provision dealing with a particular subject will control over a different provision dealing only generally with that same subject. *Kel Homes, LLC v. Burris*, 933 So.2d 699, 703 (Fla. 2d DCA 2006) citing *Island Manor Apartments of Marco Island, Inc. v. Div. of Fla. Land Sales, Condos. & Mobile Homes*, 515 So.2d 1327, 1330 (Fla. 2d DCA 1987); *Suncoast Bldg. of St. Petersburg v. Russell*, 105 So.2d 809, 810 (Fla. 2d DCA 1958). Because Paragraph 3.c. is more specific and allows mangrove trimming in accordance with Chapter 1-14, it is not inconsistent with Paragraph 1. Further, the Project Site remains in its “natural vegetative state” and remains “suitable for fish, plants or wildlife” because the mangroves are permitted to remain and are not to be altered, removed, or

defoliated. *See Exhibit 4.* Therefore, the Conservation Easement paragraph 1 does not require reversal of the Mangrove Permit.

Further, Appellants indirectly argue that because the conservation easement was created as a requirement of mitigation (*See Exhibit 5, paragraph 5*)⁴. and *Exhibit 7, paragraph 1.*) the Project Site shall be retained in the mitigated conditions. Section 1-14.04(g), Rules of the EPC, states “mangroves on lands that have been set aside as mitigation means mangrove areas on public or private land which have been created, enhanced, or restored, or preserved as mitigation under a Mitigation Agreement ... or a conservation easement that does not provide for trimming.” This definition excludes mangroves areas set aside for mitigation from applicable trimming activities, but provides an exception as demonstrated in the last portion: only if there is a conservation easement that allows for trimming. Here, the Project Site is under a conservation easement that allows for trimming. *See Exhibit 7 paragraph 3.c.* Therefore, Appellants argument that the proposed trimming is in violation of paragraph 1 of the Conservation Easement fails.

STANDARD OF REVIEW

a. Summary Recommended Final Order

Where there are no genuine issues of material fact, any party to an EPC appeal may move for summary final order whenever there is no genuine issue as to any material fact. *Rules of the Commission, 1-2.32(i)* Further, Appellants contend in the Amended Appeal, there are no issues of material fact and pursuant to Section 1-2.33(d), Rules of the EPC, “fact issues not raised by the Notice of Appeal shall be accepted as undisputed.” The Florida Rules of Civil Procedure are instructive. The Florida Rules of Civil Procedure provide that after a review of the pleading and summary judgement evidence, “if there is no genuine issue as to any material face...[then] the moving party is entitled to a judgement as a matter of law.” Fla.R.Civ.P. 1.510I

b. Agency Deference

An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. *Public Employees Relations Commission v. Dade County Police Benevolent Association*, 467 So. 2d 987 (Fla. 1985). Additionally, a “District Court of Appeal reviews an agency’s conclusions of law *de novo* and reviews the record to determine whether competent substantial evidence supports the agency’s decision[.]” *G.R. v. Agency for Persons with Disabilities*, 45 Fla. L Weekly D 2684 (Fla. 3d DCA 2020) unpublished. Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are “permissible” ones. *Suddath Van Lines, Inc. v. Department of Environmental Protection*, 668 So. 2d 209 (Fla. 1st DCA 1996).

CONCLUSION

WHEREFORE, the Appellee Executive Director of the EPC and Appellee Park Square request the Hearing Officer enter a Summary Recommended Final Order on the grounds that there are no genuine issues as to any material fact and the Appellees are entitled to a judgement as a matter of law in the form of a Recommended Order upholding the Mangrove Permit based on the application and interpretation of the Chapter 1-14, Chapter 1-11.08, Rules of the EPC, and Section 62-345, F.A.C.. Therefore, the Appellants’ claim for relief cannot be granted.

Respectfully submitted this 13 day of October, 2022.



Rebecca Rhoden, Esq.
Lowndes, Drosdick, Doster,
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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was electronically filed with the Hearing Officer at tthanas@dye-harrison.com and an electronic copy was furnished to **Park Square Enterprises, LLC** via Rebecca Rhoden (Counsel for Appellee) at Rebecca.Rhoden@lowndes-law.com; **Lenore Krentz and Kenneth Goodwin (Appellants)** at lenoreloretta@aol.com and kengoodwin4@aol.com, respectively, on this 13 day of October 2022.

Beth Le

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Exhibit 5	Amended Notice of Appeal
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BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY

LENORE KRENTZ and KENNETH GOODWIN,
Appellants,

vs.

EPC Case No. 22-EPC-006

PARK SQUARE ENTERPRISES, LLC and
ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
Appellees,

LENORE KRENTZ and KENNETH GOODWIN RESPONSE TO PARK SQUARE ENTERPRISES, LLC and
ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY'S JOINT MOTION
FOR SUMMARY RECOMMENDED ORDER

Does the hedging and windowing of over one full acre of mature mangroves in a mitigation Conservation Easement, solely for the purpose of conveying the title of the property from a Developer to a Community Development District, violate the stated priority, purpose and policies of the State of Florida and the Environmental Protection Commission of Hillsborough County? We believe, yes.

We, Lenore Krentz and Kenneth Goodwin, Appellants, are clearly not lawyers and hence we apologize for our oversights to specific legal formalities and any language barriers caused by our lack of specific terms or practices. That said we endeavor to explain and express our research, sources and assumptions plainly and hope to be understood.

See our responses to assertions made by the Appellees Joint Motion for Summary Recommended Order.

Appellee's Assertions	Appellant's Response
There are no genuine issues as to any material fact.	We contend there are material issues disputed and whether they are called genuine issues of material fact or facts that would warrant the reversal of the decision or laws and rules that would warrant the reversal or modification of the Executive Directors proposed action in this case, they are disputed issues.

Appellee's Assertions continued	Appellants' Response continued
<p>Pursuant to Section 1-14.07(d), Rules of the EPC, only Section 1-11.08, regarding the mitigation requirements to offset the trimming, is applicable.</p>	<p>The application of Chapter 1-11 concepts in their entirety are appropriately considered under this mangrove trimming application.</p> <ul style="list-style-type: none"> i. Appellees contend that Section 1-11.08 is applicable. Section 1-11.08(3) specifically states "<u><i>The application of Rule 62-345.200-.900, F.A.C., is not intended to supersede or replace existing rules regarding cumulative impacts, justification of impacts as necessary for reasonable use of the property, or to determine the appropriateness of the mitigation proposed.</i></u>" ii. There has been no justification of the impacts of this proposed permit as necessary for reasonable use of the property. iii. When researching the Section 1-11.08 reference to "justification of impacts as necessary for reasonable use of the property" one is directed to the EPC Permitting Guide which includes references specifically to the entirety of Chapter 1-11, further supporting our contention that it is appropriate to consider that Chapter in full. iv. In addition, Section 1-14.07(d) does not expressly prohibit the application of any other Section or Chapter of the Rules of the EPC. General provisions provide a blanket under which any specific provision that contradicts that blanket may be discounted in the absence of a statement that specifies which provision is to prevail. In this context we contend that the purposes, policies and priorities of the State of Florida and the Environmental Protection Commission of Hillsborough County overrule the implied exclusion of all Chapter 1-11 Sections, other than 1-11.08.

Appellee's Assertions continued	Appellants' Response continued
<p>Appellants contend paragraph 1 of the conservation easement supersedes the specific language contained in paragraph 3.</p>	<p>We contend that the actual amendment of the original Conservation Easement, modifying the original Conservation Easement to allow the trimming of mangroves, does not adhere to the policies and rules of the EPCHC as such trimming is inconsistent with the rules as set forth in Chapter 1-11 Rules of the EPC.</p> <p>Both the Amended Conservation Easement and the original Conservation Easement, paragraph one states explicitly "Those wetland or upland areas included in the Conservation Easement which were enhanced, created and/or mitigated pursuant to the Mitigation Agreement shall be retained in the enhanced, created and/or mitigated conditions required by the Mitigation Agreement."</p> <p>This is specific and to our knowledge there is no trimming allowed by the Mitigation Agreement and hence the addition of trimming to the language of the Amended Conservation Easement should be disregarded.</p>
<p>Further, the Project Site remains in its "natural vegetative state" and remains "suitable for fish, plants or wildlife" because the mangroves are permitted to remain and are not to be altered, removed or defoliated. Therefore, the Conservation Easement paragraph 1 does not require reversal of the Mangrove Permit.</p>	<p>The Amended Conservation Easement, Item 1 states "the purpose of the Amended Conservation Easement is to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wood condition to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland or upland areas included in the Conservation Easement which were enhanced, created and/or mitigated pursuant to the Mitigation Agreement shall be retained in the enhanced, created and/or mitigated conditions required by the Mitigation Agreement.</p> <p>We contend that there is nothing natural about a 24-foot mangrove having 25% of its trunk striped of leaves to create a window or in other cases to have its eventual height reduced by over 50% to ten feet.</p>

Appellee's Assertions continued	Appellants' Response continued
The rule interpretations made by the Appellants are misplaced or inaccurate and not in accordance with the plain language of EPC rules nor are consistent with basic statutory interpretation and contract interpretation principles.	Again, we are not lawyers but trying to apply the plain language in the various State of Florida and the Environmental Protection Commission of Hillsborough County documents.

We, Lenore Krentz and Kenneth Goodwin, the Appellants request the Hearing Officer deny a Summary Recommended Final Order on the grounds that there are genuine issues and matters of law that we have expressed in our responses.

Respectfully submitted this 24th day of October, 2022.

Lenore Krentz
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Kenneth Goodwin
404-539-8079 kengoodwin4@aol.com

Certificate of Service:

We certify that a true copy of the foregoing was electronically filed with the Hearing Officer at tthanas@dveharrison.com and an electronic copy was furnished to Park Square Enterprises, LLC via Rebecca Rhoden at Rebecca.rhoden@lowndes-law and to the Environmental Protection Commission of Hillsborough County vis Ruth "Beth" Le at leb@epchc.org

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ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.b.

Date of EPC Meeting: January 12, 2023

Subject: Old Landfills Redevelopment Program

Agenda Section: Regular Agenda

Division: Waste Division

Recommendation: No Staff Recommendation. Informational Report Only.

Brief Summary: Considering the increase in population in Hillsborough County and the resulting development/redevelopment activities that are occurring, and, in response to interest expressed by Commission members, the EPC Waste Division has prepared an informational report that summarizes the Agency's program associated with the tracking of and redevelopment of Old Landfill sites.

Financial Impact: No Financial Impact

List of Attachments: None

Background: Waste Division staff will provide information related to Historic Solid Waste Disposal Areas (aka Old Landfills) located throughout Hillsborough County as well as an overview of the EPC's long-standing Old Landfill Redevelopment Program which serves to promote, assist and oversee the redevelopment of those historic sites. This presentation will provide information regarding the history of the known Old Landfill sites, the intent of the EPC's Director's Authorization (D.A.) program, the regulatory requirements for site redevelopment and will highlight the successes of the program.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.c.

Date of EPC Meeting: January 12, 2023

Subject: Request to Initiate Fee Study and Rulemaking Regarding EPC Fees

Agenda Section: Regular Agenda

Division: All EPC Divisions

Recommendation: Direct EPC staff to initiate a new fee study and report back with any recommended adjustments via proposed rule revisions to Chapter 1-6.

Brief Summary: In 2018, the Commission approved revisions to Chapter 1-6, Rules of the EPC, based on a study of the fees schedule conducted by staff. These fees have not been substantively evaluated since that time, and policy recommends periodic review of the fees including assessment of full cost recovery and recommendation of potential adjustments.

Financial Impact: There will be no direct financial impact as a result of this request to perform a new fee study as it is expected to be completed by existing staff with no additional funding requested.

List of Attachments: None.

Background: In 2018, following a full cost analysis of EPC's fees, the Commission approved a revision to Chapter 1-6, Rules of the EPC (Services-Fee Schedule Rule). The fee study analyzed the fees the EPC charges for services and other regulatory fees, and the study recommended adjustments based on multiple factors. These fees have not been comprehensively evaluated since that time, and BOCC Policy 03.02.02.09 (adopted by EPC) recommends that EPC staff periodically review the fees-services schedule and report back on full cost with any proposed adjustments.

Similar to the previous study, EPC staff intend to initiate a new study evaluating the existing fees. The study will include a comparison to fees other similar organizations charge, an evaluation of the fees charged relative to the current costs of the service (a/k/a full cost recovery), and consideration of other economic factors.

The fees from Chapter 1-6 do not have an automatic revision provision that allows for continual adjustment based on economic climate. EPC staff is requesting approval to initiate a new fee study of Chapter 1-6 and report back with any recommended adjustments which would involve a rulemaking via a public hearing.