

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

Meeting time
2:00 p.m.

COMMISSION AGENDA **September 21, 2023**

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

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

2. ROLL CALL

3. CHANGES TO THE AGENDA

4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, or SEPARATE VOTE

5. RECOGNITIONS and PROCLAMATIONS

- a. Recognition and farewell to retiring employees Lora Woodard (Water) and Sterlin Woodard (Air)

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: <https://www.epchc.org/about/meetings-agendas>.*

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

- a. Approval of June 15, 2023 Regular EPC Meeting Minutes 2
- b. Monthly Activity Report FY2023 (June, July, August) 6
- c. Pollution Recovery Fund (PRF) Budget FY2023 8
- d. Legal Case Notification 10

8. PUBLIC HEARING

- a. Conduct a Public Hearing to consider proposed amendments to the EPC’s Waste Management Rule, Chapter 1-7, Rules of the EPC 12
- b. Conduct a Public Hearing to consider proposed amendments to the EPC’s Noise Pollution Rule, Chapter 1-10, Rules of the EPC 28

9. REGULAR AGENDA

- a. Conduct a Final Order Hearing in *James Anderson v. Joel Juren and EPC*, Case No. 22-EPC-015 38
- b. 2023 EPC Annual Report..... 383
- c. Executive Director Annual Evaluation Process 384
- 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: September 21, 2023

Subject: Approval of the June 15, 2023, EPC meeting minutes.

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Approve the June 15, 2023, EPC meeting minutes.

Brief Summary: Staff requests the Commission approve the meeting minutes from the Commission meeting held on June 15, 2023.

Financial Impact: No Financial Impact

List of Attachments: Draft copy of the June 15, 2023, EPC meeting minutes.

Background: None

JUNE 15, 2023 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, June 15, 2023, at 2:00 p.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida, and held virtually.

The following members were present: Chair Joshua Wostal and Commissioners Donna Cameron Cepeda, Harry Cohen, Pat Kemp, Gwen Myers, and Michael Owen.

The following member was absent: Commissioner Ken Hagan.

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

► Chair Wostal called the meeting to order at 2:00 p.m. ► Commissioner Cameron Cepeda led in the pledge of allegiance to the flag and gave the invocation.

2. ROLL CALL - **None.**

3. CHANGES TO THE AGENDA

► Ms. Janet Lorton, EPC Executive Director, confirmed there were no changes to the agenda.

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

5. RECOGNITIONS AND PROCLAMATIONS

- a. Recognition of the EPC's 2023 Scholastic Environmental Merit Award Winner, Lydia Linares, for her science fair project related to microplastics and algae.

► Ms. Lorton recognized Ms. Linares, who made comments. Dialogue occurred.

6. PUBLIC COMMENT - **None.**

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

- a. Approval of May 18, 2023, Regular Meeting Minutes
- b. Monthly Activity Report Fiscal Year (FY) 2023 (May)
- c. Pollution Recovery Fund Budget FY 2023
- d. Legal Case Notification

THURSDAY, JUNE 15, 2023

▶ Chair Wostal asked for approval of the Consent Agenda. **Commissioner Kemp so moved, seconded by Commissioner Myers, and carried six to zero.** (Commissioner Hagan was absent.)

8. PUBLIC HEARING - ▶ **None.**

9. REGULAR AGENDA

a. Overview of Air Division Environmental Program and Services

▶ Ms. Lorton introduced Ms. Diana Lee, EPC, who expounded on the item. ▶ Commissioner Myers explored public communication regarding the air curtain incinerator. Commissioner Owen pondered air pollution/residential complaints, to which EPC General Counsel Rick Muratti responded. Commissioner Cohen examined the EPC's ability to alert the populace in the event of a major smoke challenge. Chair Wostal requested information on fugitive dust. Commissioner Kemp considered the particulate matter levels.

b. Overview of Waste Division Environmental Program and Services

▶ Ms. Steffanie Wickham, EPC, elaborated on the item and ▶ answered cleanup/Brownfields questions from Commissioner Kemp. ▶ Commissioner Owen inquired on the gas station inspection non-program requirements and enforcement procedures.

c. Executive Director's Report

▶ Ms. Lorton delivered the report.

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

THURSDAY, JUNE 15, 2023

ADJOURN

▶ There being no further business, the meeting was adjourned at 3:07 p.m.

READ AND APPROVED: _____
CHAIR

ATTEST:
CINDY STUART, CLERK

By: _____
Deputy Clerk

jh

DRAFT



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.b.

Date of EPC Meeting: September 21, 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 June, July and August FY23

Background: Select data that is associated with the EPC's five core functions; citizen support, air and water 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>June</u>	<u>July</u>	<u>August</u>	<u>FISCAL YEAR TO DATE</u>
A.	Core Function: Citizen Support				
1	Environmental Complaints Received	100	109	102	1276
2	Agency-wide Public Record Request (Note: does not include division-specific record requests)	16	15	13	218
B.	Core Function: Air & Water Monitoring				
1	Air Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	94.7%	95.8%	89.6%	N/A
2	Water Quality Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	99.6%	99.6%	100.0%	N/A
3	Number of Noise Monitoring Events	3	1	1	23
C.	Core Function: Environmental Permitting				
1	Permit/Authorization Applications Received	172	105	155	1611
2	Applications In-house >180 days	52	32	33	N/A
3	Permits/Authorizations Issued	148	110	132	1435
4	Petroleum Cleanup Cases	104	106	111	981
D.	Core Function: Compliance Assurance				
1	Compliance Inspections	418	302	306	3917
2	Compliance Test Reviews (NOTE: Wetlands reviews included under D.1)	83	77	170	1356
3	Compliance Assistance Letters Issued	144	133	174	1718
4	Warning Notices Issued	10	20	17	201
E.	Core Function: Enforcement				
1	New Cases Initiated	4	11	8	59
2	Active Cases	67	69	67	N/A
3	Tracking Cases	50	47	54	N/A



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.c.

Date of EPC Meeting: September 21, 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 8/31/2023**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 1,136,503	Artificial Reef	\$ 33,852	Minimum Balance	\$ 120,000	
Interest	\$ 25,011	Open Projects	\$ 345,259	Est. FY 24 Budget	\$ 33,852	
Deposits	\$ 382,693			Asbestos Removal	\$ 5,000	
Total	\$ 1,544,207	Total	\$ 379,111	Total	\$ 158,852	\$ 1,006,244

PROJECT		Project Amount	Project Balance
FY21 Projects			
TBW 2D Island Living Shoreline	10131.102063.582990.5370.1350	\$ 49,560	\$ 16,699.95
UNF Multidrug Resistant Bacteria	10131.102063.581990.5370.1353	\$ 50,000	\$ 33,830.49
USF Fecal Source Detection	10131.102063.581990.5370.1355	\$ 50,000	\$ 13,321.58
ERI MacDill AFB Saltern Restoration	10131.102063.582990.5370.1356	\$ 37,000	\$ 17,650.00
UF/IFAS Florida Friendly Landscaping	10131.102063.581990.5370.1358	\$ 8,600	\$ 8,600.00
		\$ 195,160	\$ 90,102.02
FY22 Projects			
DOH/EPC Radon Study	10131.102063.534990.5370.1359	\$ 20,860	\$ 400.00
DOH/EPC Radon Study	10131.102063.552001.5370.1359	\$ 14,000	\$ 7,320.39
Heckman Petro. Assess.	10131.102063.531001.5370.1297	\$ 15,000	\$ 15,000.00
		\$ 49,860	\$ 22,720.39



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.d.

Date of EPC Meeting: September 21, 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
23-EPC-005	08-17-23	Administrative	Nathan Jordan v. Kent Hickman and EPC	Wetlands
23-EPC-006	08-28-23	Administrative	Gary and Elizabeth Gore v. Kevin MacDonald and EPC	Wetlands
23-EPC-007	08-30-23	Administrative	Amanda Jordan v. Kent Hickman and EPC	Wetlands



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 8.a.

Date of EPC Meeting: September 21, 2023

Subject: Rule Adoption Public Hearing to consider amendments to the EPC Waste Management Rule, Chapter 1-7, Rules of the EPC

Agenda Section: Public Hearing

Division: Waste Division

Recommendation: Adopt the proposed rule amendments to Chapter 1-7, Rules of the EPC, and authorize staff to make typographic corrections as needed.

Brief Summary: Pursuant to EPC Act and Chapter 1-2, Rules of the EPC, a Noticed Public Hearing shall be held by the Commission to adopt or amend a rule. EPC staff drafted proposed amendments to Chapter 1-7 to address changes in State and local laws concerning various waste matters as well as clarifying rule requirements associated with activities needing a Director's Authorization for the operation of a solid waste management facility and activities concerning development in former solid waste disposal areas (old landfills). Two public workshops were held.

Financial Impact: No Financial Impact

List of Attachments: Proposed Amended Chapter 1-7, Rules of the EPC (Draft version dated September 8, 2023)

Background:

The EPC Waste Management Rule, Chapter 1-7, Rules of the EPC, addresses various waste management issues, including but not limited to activities needing a Director's Authorization for the operation of a solid waste management facility and activities concerning development in former solid waste disposal areas (old landfills). The last significant amendments were adopted by the EPC Commission in October 2002. The EPC staff propose rule amendments to address changes in State and local laws concerning various waste matters over the past twenty years. Many proposed changes are non-substantive and are intended to simply update citations, definitions, and other issues that have developed in the past twenty years.

The main amendments for consideration in the proposed rule that are substantive concern the following subjects:

- Codifying and implementing a long-term landfill gas remediation program with engineering and institutional controls for the redevelopment of historic solid waste filled areas.

- Codifying a definition for the application of processed yard waste to be defined as solid waste.
- Codifying changes to the financial assurance requirements for solid waste management facilities.
- Addressing the re-use of recovered screen materials in the redevelopment of solid waste filled areas.
- Adopting standards for the management of used oil and used oil filters.

EPC staff have conducted two public workshops with stakeholders to review the proposed amendments and seek feedback. The workshops were held on August 17, 2023 and on September 5, 2023. Additionally, EPC staff announced the workshops, the public hearing, and provided a brief overview of the changes to the EPC Business Feedback group on August 8, 2023 and the Environmental Feedback group on August 10, 2023. The rule drafts, notice of workshops, and notice of the opportunity to send comments were provided via group e-mails, social media postings, and website postings since early August.

Pursuant to noticing requirements in the EPC Act and Chapter 1-2, Rules of the EPC, this public hearing was noticed in the Tampa Bay Times Hillsborough County Edition on September 6, 2023 and the La Gaceta weekly publication on September 8, 2023. Further, the draft rule has been published on the EPC website since August 8, 2023, and the most current draft was updated on September 8, 2023.

EPC staff requests the Commission conduct a public hearing to take comment and to approve adoption of the rule amendments as proposed, and in the event any typographical errors are discovered after the hearing, approve staff to make the necessary non-substantive corrections, prior to filing the rule with the Clerk.

**RULES OF THE ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

**CHAPTER 1-7
WASTE MANAGEMENT**

Part I	General
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1-7.103	Reference Standards
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Part II	Solid Waste Management
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1-7.202	Director's Authorization
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1-7.204	Landfills
1-7.205	Recovered Materials Processing Facilities and Waste Processing Facility <u>Facilities</u>
1-7.206	Clean Debris and Construction and Demolition Debris
1-7.207	Solid Waste Combustor <u>Ash</u>
1-7.208	Composting Facilities, <u>Yard Trash Processing Facilities and Beneficial Reuse of Processed Yard Trash</u>
1-7.209 208	Waste Tires
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Part III	Hazardous Waste Management (Small Quantity Generators)
1-7.300	General Applicability
1-7.301	References, Variances and Case-by-Case Regulations
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1-7.303	Prohibitions
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1-7.305	Transfer Facilities
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1-7.307	Specific Hazardous Wastes and Types of Hazardous Waste Management Facilities
1-7.308	Land Disposal Restrictions
1-7.309	Standards for Universal Waste Management
Part IV	Site Rehabilitation
1-7.400	Brownfields
1-7.401	Petroleum Cleanup
1-7.402	Cleanup Standards

Part I General

1-7.100 Intent.

(1) The Environmental Protection Commission of Hillsborough County (Commission) finds that the improper management, handling and disposal of solid waste, hazardous waste, and recyclable and recoverable materials can result in or contribute to the pollution of water, soil, and air.

(2) It is the Commission's intent, in adopting this rule, to apply reasonable control and regulation over the storage, collection, transportation, receiving in bulk, separation, processing, recycling, mining and disposal of solid waste, hazardous waste, and recyclable and recoverable materials in order to protect the public health, safety and

welfare and the environment, and to encourage the recycling of solid waste, and recyclable and recoverable materials that would otherwise be destined for disposal.

(3) It is the Commission's intent to require a Director's Authorization for all solid waste management facilities in Hillsborough County prior to the construction, operation, modification, or use of the facility to ensure the proper location, design, management, operation, and closure of such facilities in order to reduce or eliminate the risks of pollution.

(4) The Florida Legislature recognizes and requires in Sections 403.7225 and 403.7238, F.S., the need for increased participation by local governments in ensuring that small quantity generators and transfer facilities properly manage their hazardous waste and that waste reduction opportunities are promoted and realized. Hillsborough County, obligated by Section 403.7234, F.S., to implement the small quantity generator notification and verification program, assigned its responsibility to the Commission by Interlocal Agreement [Document #93-1101] on June 18, 1993.

(5) Section 403.7225(12), F.S., authorizes imposition of an annual notification and verification surcharge on the business or occupational license of any firm that is classified as a small quantity generator of hazardous waste. The Commission has adopted such a fee in Section 1-6.03(6) of its rules, which is collected in part by agreement with the Hillsborough County Tax Collector through the County's occupational license program.

(6) All hazardous waste standards and criteria, notification requirements and permit conditions adopted by the Department in Chapter 62-730, Florida Administrative Code (F.A.C.), shall be fully applicable and enforceable on all facilities handling hazardous wastes in Hillsborough County. The Commission, however, intends to directly regulate under Part III of this rule, only those facilities identified as small quantity generators and hazardous waste transfer facilities.

Section Part History – ~~amended 8/9/12 and effective 8/20/12~~, adopted, MM/DD/YYYY; Effective date: MM/DD/YYYY

1-7.101 Interpretation.

(1) By adopting certain rules of the Department, the Commission intends that any provision therein requiring permits, application for ~~alternative~~alternate procedures, notifications, or notices of general permit to the Department shall be interpreted as requiring alternate submission of such documents to the Commission for review and/or issuance of a Director's Authorization under the provisions of this rule.

(2) In implementing any Department rule herein, the Commission will apply the Department's interpretations of its regulations where consistent within the context of these rules, however, any action or position taken by the Commission or its Director in conflict with a Department interpretation or policy applying such regulations will not be invalidated on that basis alone unless the Department interpretation or policy was formally issued in writing prior to the Commission's or the Director's action.

1-7.102 Definitions.

(1) For purposes of Part III of this rule, the definitions adopted or contained in Section 62-730.020, F.A.C., are incorporated herein. Where a definition cannot be reconciled with definitions adopted in this Section, the definitions in Section 62-730.020, F.A.C., shall prevail in application of Part III.

(2) The Commission also adopts for purposes of this rule the definitions contained in Sections 62-701.200, F.A.C. and Section 403.703, F.S., except as may be otherwise defined in Chapter 84-446, Laws of Florida. In addition, the following definitions shall apply:

(a) "Beneficial Use" means that readily degradable organics, including processed yard trash, are placed on or in the soils to provide a viable benefit, such as, reducing erosion and water loss, regulating soil temperature, preventing the growth of weeds, or serving as a soil amendment upon decomposition. Placement of materials for purposes of disposal is not considered to be a beneficial use.

(b) "Development", as it pertains to Historic Solid Waste Disposal Areas, means the construction of buildings, structures or facilities, utility lines or pipes, parking areas, paved surfaces, stormwater management systems and stormwater management structures and conveyances.

(c) "Clean Wood" means wood, including lumber, tree and shrub trunks, branches, and limbs, which is free of paint, glue, filler, pentachlorophenol, creosote, tar, asphalt, other wood preservatives or treatments.

(d) "Department" means the Florida Department of Environmental Protection.

~~(b)~~(e) "Director" means the Executive Director of the Environmental Protection Commission or his designated staff as appropriate.

~~(e)~~(f) "Director's Authorization" means:

1. The specific written approval of the Director, or
2. A Department solid waste management facility permit or general permit, the application or notification for which has been reviewed by the Director's Director or staff as provided in this rule, and for which the Director has ~~not~~ issued a written acknowledgment and Notice of Rights and no Notice of Objection as defined in Section 1-7.102(2)(f) has been issued.

~~(d)~~(g) "Floodplain" means lands which have a 1 percent or greater chance of flooding each year and a 26 percent chance of flooding in a 30-year period.

(h) "Historic Solid Waste Disposal Area" means a property, group of properties, portion of property or geographic area at which solid waste was disposed underground, disposed and covered, or disposed without cover and for which no federal, State, or local closure permit was issued to eliminate or minimize health hazards and provide for long term monitoring or contingency at the time of site closure or completion. The term "Old landfill" shall have the same meaning as "Historic Solid Waste Disposal Area".

(i) "Land Clearing Debris" means rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project. Land clearing debris does not include vegetative matter from lawn maintenance, commercial or residential landscape maintenance, right-of-way or easement maintenance, farming operations, nursery operations, or any other sources not related directly to a construction project.

(j) "Leachate" is defined pursuant to by Section 62-701.200(59), F.A.C. For the purpose of this rule, leachate shall also include groundwater removed or recovered from Historic solid-Solid waste-Waste disposal Disposal areas-Areas for the purpose of dewatering, surface water or storm water that has come in contact with excavated and/or in-situ solid waste, and liquids that may drain or otherwise be expressed from staged or excavated solid waste, separated or co-mingled soils, and ~~RSM~~recovered screen material.

~~(e)~~(k) "Mulch" means yard trash that has been mechanically processed so that it will pass through a six-inch sieve. Mulch and processed yard trash are terms which can be used interchangeably.

(l) "Notice of Objection" means a specific written ~~document or letter~~notice signed by the Director and directed to the Department with copy(ies) provided to the applicant, which states ~~an~~the Director's objection to the basis or criteria for the approval of a proposed Department permit and stating that a Director's Authorization is not approved by the Director based on that objection.

~~(f)~~(m) "Old Landfill" shall have the same meaning as "Historic Solid Waste Disposal Area" as defined pursuant to Section 1-7.102(2)(h).

(n) "Processed Yard Trash" shall have the same meaning as "mulch" as defined pursuant to Section 1-7.102(2)(k).

(o) "Recovered Screen Material (RSM)" means solid waste which consists of the fines and/or soils fraction of the material generated through the screening or processing of solid waste that has been excavated ~~solid waste or construction~~from an Historic Solid Waste Disposal Area. This definition also includes those materials identified by the Department as "recovered screen material" and ~~demolition debris,~~"screened solid waste."

~~(e)~~(p) "Redevelopment" as pertains to Historic Solid Waste Disposal Areas means development, as defined in Section 1-7.102(b), on property upon which preexisting uses are or have been present.

(q) "Site Closure" means the necessary site or facility closure and cleanup activities that are to occur in the event that site work is stopped or in the event that a site is closed, abandoned or vacated prior to the completion of development or redevelopment activities or prior to the planned or anticipated completion of solid waste management facility closure and cleanup. Necessary site or facility closure and cleanup activities shall include the complete removal and proper disposal of excavated solid waste; accumulated, stored and staged processed and unprocessed solid waste; and the placement or replacement of necessary fill material.

(r) "Solid Waste Management Facility" ~~as~~is defined by Section 62-701.200(112), F.A.C., and includes any solid waste disposal area, dump site, landfill, volume reduction plant (incinerator, pulverizer, compactor, shredding and baling plant), composting facility, waste recycling or -disposal site or facility, recovered materials processing facility, waste processing facility, transfer station, or other facility or operation the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste or recovered materials. For the purposes of this regulation, "Solid Waste Management Facility" does not include those sites defined as "Historic Solid Waste Disposal Areas".

~~(h)~~(s) "SWFWMD" or "District" means the Southwest Florida Water Management District.

(t) "Yard trash" means vegetative matter resulting from landscaping maintenance or land clearing

operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps. This definition shall also include clean wood.

Section Part History – ~~amended 8/9/12 and effective 8/20/12~~.adopted, MM/DD/YYYY; Effective date: MM/DD/YYYY

1-7.103 Reference Standards.

Standard reference documents used in implementing these rules shall be those listed in Section 62-701.210, F.A.C.

1-7.104 Application Fees.

Applicable application fees for a Director's Authorization or other review required pursuant to this rule shall be as provided in Chapter 1-6, Rules of the Commission. Unless provided otherwise, fees required by Department regulations adopted by reference in this rule, are separate and shall be paid directly to the Department.

1-7.105 Confidential Information.

~~Confidential trade~~Trade secrets information, as defined by statute, shall be ~~kept confidential~~maintained pursuant to Sections 403.~~73~~111 and ~~Section 403.111~~815.045, F.S. or other applicable law.

1-7.106 Environmental Sampling.

Any person who may be responsible for the emission or discharge of pollutants to air, surface water, ground water, or soil, may be required by the Director to conduct, at their expense, tests which will identify and quantify the emission or discharge and to provide the results of such tests to the ~~Commission~~Director or designated staff.

Part History – adopted, MM/DD/YYYY; Effective date: MM/DD/YYYY

Part II Solid Waste Management.

1-7.200 Prohibitions.

- (1) The prohibitions of Section 62-701.300, F.A.C., are specifically adopted by reference.
- (2) It is unlawful for any person in Hillsborough County to store, process, manage or dispose of solid waste or recovered materials except as provided for in Section 1-7.202.
- (3) ~~No~~Unless otherwise addressed herein, no person shall conduct the activities listed in Section 1-7.202 without a currently valid Director's Authorization.
- (4) ~~No~~Pursuant to this rule, no person shall fail to comply with the requirements and conditions contained in this rule, a Director's Authorization or a Department solid waste management facility permit~~pursuant to this rule.~~

1-7.201 Alternate Procedures.

The provisions of Section 62-701.310(1), (2), (4), (5) and (7), F.A.C., are adopted by reference. A Director's Authorization shall be required for alternate procedures or requirements. Requests for alternate procedures shall be accompanied by the appropriate application fee pursuant to Chapter 1-6, Rules of the Commission.

1-7.202 Director's Authorization.

- (1) The following activities in Hillsborough County shall require a Director's Authorization:
 - (a) The construction ~~,or~~ operation ~~or use~~ of a solid waste management facility requiring a permit or general permit pursuant to Chapter 62-701, F.A.C.~~;~~
 - (b) The construction ~~,or~~ operation ~~or use~~ of any alternate procedures or requirements as provided in Section 1-7.201;
 - (c) The excavation of solid waste ~~,or~~ the modification ~~or,~~ development or redevelopment of ~~a~~an Historic solid waste Waste filled Disposal Area, ~~or the~~ including but not being limited to the construction of buildings, structures or facilities, utility lines or pipes, parking areas ~~or,~~ paved surfaces, ~~on~~stormwater management systems, and stormwater management structures and conveyances within the boundaries of an ~~or through areas filled with~~ Historic sSolid waste Waste Disposal Area. In the event that information and data are provided to the EPC which verify that no solid waste is present within the boundaries of the development or redevelopment project and provided that it is conclusively demonstrated that those development or redevelopment area(s) have not been impacted by the historic disposal of solid waste, as pertains to the presence of landfill generated gas, soil impacts or groundwater impacts, the requirement to obtain a Director's Authorization may be waived.

~~or areas otherwise impacted by solid waste disposal; and~~

(d) ~~The construction, operation~~ As described in Section 1-7.203(4)(g) below, the installation, operation, and continued operation of landfill gas mitigation systems and the implementation and continuation of long-term landfill gas monitoring upon expiration of a Director's Authorization issued pursuant to Section 1-7.202(1)(c) above, and upon the determination by the Director or designated staff that landfill gas is present or is likely to be present at concentrations which may pose a threat to public health, public safety, or the environment, the real property owner must be the Authorized Party associated with the renewal of a Director's Authorization pursuant to this section.

(e) The construction, operation, or implementation of any solid waste management facility or recovered materials processing facility or activity otherwise exempt from Department regulation pursuant to Sections 62-701.220 and 62-701.320, F.A.C.

(2) The specific activities listed in Section 62-701.320(2), F.A.C., are hereby granted a Director's Authorization except for those activities identified in Sections 62-701.320(2)(a), 62-701.320(2)(b)3, and 62-701.320(2)(c), F.A.C.

(3) A permit or general permit granted by the Department pursuant to Chapters 62-701, 62-709, and 62-711, F.A.C., shall constitute a valid Director's Authorization provided the application or notification has been timely submitted ~~to the Director, or the~~ or Director's staff, and the application or notification has been reviewed according to Department criteria, and no Notice of Objection has been issued ~~by the Director.~~ Compliance with the application requirements outlined in Section 1-7.202(4) may be necessary only if the Director has issued a Notice of Objection.

(4) All applications for a Director's Authorization submitted pursuant to this rule shall include the following:

(a) The appropriate application fee as established in Section 1-6.03, Rules of the ~~Environmental Protection~~ Commission. Failure to remit the required application fee in accompaniment with an application for Director's Authorization may result in a delay in the initiation of the application review until such time as the required fee is received by the EPC. Failure to remit the required application fee in a timely manner may result in the Director's Authorization application being deemed incomplete and may result the denial of the requested Director's Authorization.

(b) A copy of the complete Department permit application or general permit notification where applicable, as required by Sections 62-701.320 or 62-701.330, F.A.C., including copies of all appendices, plans, and drawings.

(c) If the property owner is different from the applicant, evidence of authorization to use the property for the proposed facility ~~and written acknowledgement by the property owner of the applicant's pursuit of the~~ Director's Authorization.

(d) ~~Verification~~ Written verification from the local permitting or approval authority that the siting of the facility will not violate local zoning or land use ordinances.

(e) A professionally certified boundary survey, legal description of the property and, property folio number or property identification number on file with the County Property Appraiser's Office.

(f) A regional map or plan illustrating the project location in relation to surrounding land use.

(g) A current vicinity map or aerial photograph taken no greater than within one year preceding the application submittal date.

(h) A description of the general operating plan for the proposed site, facility or operation, including equipment to be used and number of personnel.

(i) Detailed site plans of a scale no greater than one inch (1") equals two hundred feet ~~The (200').~~ All site plans must be signed, sealed and dated by a professional engineer registered in the State of Florida and must include notation of:

1. Project location and identification of all structures, roadways and other operational appurtenances;
2. Proposed disposal, handling, storage and processing areas;
3. Total acreage of the site;
4. Access control features and any other relevant physical features such as water bodies, wetlands, and areas subject to frequent or periodic flooding; and
5. Identification of all potable water wells on or within five hundred feet (500') of the site boundary.

(j) A copy of ~~any~~ SWFWMD or Department permit for the control of storm water or written

documentation from the permitting or approval authority that no permit is required.

1. In the event that a SWFWMD or Department permit is not required, site plans including site topography and storm water control devices in accordance with Chapter 62-25, F.A.C., applicable federal, State and local stormwater regulations, shall be provided. ~~All plans and calculations must be signed, sealed and dated by a professional engineer registered in the State of Florida. Storm~~

2. Without Director approved engineering controls, surface water shall not be impounded or otherwise accumulated ~~atop areas impacted by so as to:~~

a. Impact or have the potential to impact solid waste or recovered material storage areas.

b. Impact or have the potential to impact Historic sSolid waste-Waste disposal Disposal Areas or-in areas where RSMrecovered screen material has been utilized as fill without Commission approved engineering controlsmaterial.

3. All design plans and all design and performance calculations must be signed and sealed by a professional engineer licensed in the State of Florida.

(k) A signed and sealed general closure plan or site completion plan ~~to~~which must include:

1. Cross section details of any illustrating all disposal areas, areas filled with clean fill, areas where recovered screen material has been used as fill material, details associated with final cover depths, and final site contours;

2. ~~Revegetation~~ Re-vegetation plan and/or landscape plan details; and,

3. A schedule for the removal and proper disposal of excess or excavated solid waste, hazardous waste, and recovered materials, and recovered screen material; and

4. A detailed estimate of the cost of closure of the site or facility. Closure cost estimates must be based on an assumption that the cumulative maximum volume or material associated with and/or to be generated by the proposed site activities remains on site and must assume all closure activities and tasks are performed by third party entities.

(l) ~~Financial Assurance.~~ The owner or operator of a site or facility requiring a Director's Authorization pursuant to Section 1-7.202(1)(c) ~~and~~, Section 1-7.202(1)(d) and 1-7.202(1)(e) shall provide the ~~Commission~~Director or staff with proof of financial assurance in compliance with the following:

1. The financial assurance mechanism shall be issued in favor of the Environmental Protection Commission of Hillsborough County in the an amount of the closing costs for the site or facility no less than that provided in an approved closure cost estimate submitted in accordance with Section 1-7.203(4)(k)4.

2. ~~Proof of financial~~Financial assurance may ~~consist~~be provided in the form of one or more of the following instruments: ~~performance~~

a. Performance bond; ~~irrevocable~~

b. Irrevocable letter of credit; ~~deposit~~

c. Deposit of cash or cash equivalent into an escrow account ~~or; guarantee;~~

d. Guarantee bond.

3. Proof of financial assurance along with ~~an assessment a~~ detailed estimate of the ~~anticipated~~ cost of closure of the site or facility shall be submitted to the ~~Commission~~Director as part of the Application for Director's Authorization ~~in accordance with Section 1-7.202(4)(k)4.~~ The ~~Commission will~~Director may accept a suitable financial assurance mechanism held by another regulatory agency upon assurance that the funds are available to the ~~Commission~~Director.

~~4. The requirement to provide proof of financial assurance for sites regulated pursuant to Section 1-7.202(1)(c) may be waived if reasonable assurance can be provided by the applicant which demonstrates that the applicant has the ability to effect proper site closure and that the site will be properly closed even in the event that the proposed development activities are not, for unforeseen reasons, completed in their entirety.~~

~~5.4.~~ For sites or facilities regulated pursuant to Sections 1-7.202(1)(c), 1-7.202(1)(d) and 1-7.202(1)(~~de~~) which are owned or otherwise under the control of a local government, the requirement to provide financial assurance may be waived provided that verification, signed by or attested to by an authorized public employee, may be provided which assures that the local government has the financial resources and ability to effect proper site closure and that the site will be properly closed.

5. Any request for relief from the requirement to provide financial assurance shall be evaluated and processed pursuant to the provisions of Chapter 1-2, Rules of the Commission, Section 1-2.05.

~~(5) The Commission will accept submissions on the forms required by Section 62-701.900, F.A.C. For activities requiring submission pursuant to Section 1-7.202(1)(c) and Section 1-7.202(1)(d), an application form may be~~

~~obtained from the Commission.~~

~~(6)~~ Pursuant to the existing Operating Agreement between the Department and the Commission, the ~~Commission Director or assigned staff~~ shall comment to the Department as to completeness on all applications and notifications within Hillsborough County requiring a Department solid waste management facility permit or general permit as required therein. Recommendation for issuance or denial, based upon reasonable assurance that the facility will meet Department criteria and standards, shall be submitted to the Department as described in the Operating Agreement or Chapter 120, F.S.

~~(7)~~ The requirements and standards for review of applications for a Director's Authorization shall be those contained in Section 62-701.320, F.A.C., this rule, and any other Commission or Department rule specifically providing conditions, standards, or criteria ~~for relevant to~~ the type of facility or activity seeking authorization.

(7) A Director's Authorization shall be valid for a period of no greater than five (5) years. In the event that no authorized site activities are initiated or undertaken within the five (5) year term, a Director's Authorization may be extended, upon submittal of a written extension request by the Authorized Party and upon written approval by the Director.

Part History – Section amended 8/9/12 and effective 8/20/12, adopted, MM/DD/YYYY; Effective date: MM/DD/YYYY

1-7.203 ~~Construction on Areas Impacted by Redevelopment of Historic Solid Waste Disposal or Excavation of Solid Waste Disposal Areas.~~

Applications Except as provided in 1-7.202(6), all applications for Director's Authorization submitted pursuant to Section 1-7.202(1)(c) will be reviewed, approved or denied based upon the written conclusions and recommendations of appropriately certified professionals according to the following:

(1) Detailed site plans in compliance with Section 1-7.202(4)(i) which clearly illustrate and delineate the following:

(a) Horizontal and vertical extent of all solid waste fill; disposal areas and all areas affected by subsurface solid waste.

(b) All proposed buildings, structures, utility lines or pipes, parking areas, paved or impervious surfaces, and storm water impoundment areas and conveyance structures; control devices.

(c) ~~Solid~~ All buried solid waste excavation locations, locations where construction will occur atop and/or adjacent to solid waste ~~fill~~ disposal areas and locations where buried solid waste will be left in place;.

(d) Horizontal and vertical extent of all areas where ~~RSM~~ recovered screen material will be used as fill; material.

(e) Excavated solid waste, recovered screen material, and leachate handling, temporary storage, ~~and~~ processing and treatment areas; or locations.

(2) A geotechnical investigation ~~and foundation analysis~~ in accordance ~~with the Florida Building Code and~~ applicable industry standards must be submitted. In addition, appropriate ~~building~~ safeguards must be addressed in order to protect proposed structures that may be constructed on ~~or~~ through or adjacent to solid waste filled areas and areas where recovered screen material has been used as fill material. The investigations, analyses and reports required by this Section shall be certified by an ~~experienced~~ professional engineer registered licensed in the State of Florida.

~~(3) The applicant must comply with As pertains to all local, state and federal building codes parcels identified in order to ensure that proposed structures will not be damaged by potential landfill subsidence.~~

~~(4) A Preliminary Site Assessment Plan and Site Assessment~~ the application information, an Environmental Status Report must be submitted appropriate which will report and evaluate site conditions with respect to the proposed project to demonstrate existing and potential contamination of air, landfill generated gas, surface water, soil and groundwater from the solid waste filled quality associated with all areas of within the project boundaries.

(a) Initial landfill gas investigations shall be completed through the installation and monitoring of properly designed, properly installed and appropriately located landfill gas monitoring wells. Landfill gas data shall be reported as a percent of the Lower Explosive Limit with respect to methane or shall be reported as the percentage of methane in air.

(b) All soil, surface water and groundwater data obtained shall be evaluated based on comparison to the Chapter 62-777, F.A.C., Contaminant Cleanup Target Levels and all site. Preliminary investigation activities associated with the completion of the Environmental Status Report required pursuant to Section 1-7.203(3) shall be completed in substantial conformance with the site assessments assessment procedures required pursuant to

Chapter 62-780.600, F.A.C.

1. In the event that it can be conclusively shown that the site has been solely utilized for the historic disposal of construction and demolition debris, soil and ground water may be characterized in accordance with the laboratory parameters listed in Section 62-701.730(8)(c), F.A.C., as appropriate.

2. In the event that it is determined that the site has been utilized for the historic disposal of solid waste other than and/or in addition to construction and demolition debris, soil and ground water must be characterized in accordance with the laboratory parameters listed in Section 62-701.510(7)(a) and Section 62-701.510(7)(c), F.A.C., as appropriate.

(c) All Environmental Status Report related investigation activities must be conducted under the guidance of an ~~experienced~~ professional geologist or professional engineer ~~registered~~ licensed in the State of Florida, and all Environmental Status Reports submitted must be signed and sealed by the professional of record.

(5)4) Landfill-generated gas (LFG) shall be investigated ~~and~~, monitored, and mitigated, as determined necessary by the Director, at all sites requiring a Director's Authorization pursuant to Section 1-7.202(1)(c). ~~LFG mitigation~~ Mitigation systems and ~~LFG~~ landfill gas monitoring plans shall be designed, installed, and implemented under the supervision of an ~~experienced~~ professional engineer ~~registered~~ licensed in the State of Florida. LFG

(a) At a minimum, landfill gas control systems shall be designed to meet the requirements of Section 62-701.530(1)(a)1, (1)(a)2, and (1)(a)3, F.A.C., and the standards defined ~~under~~ pursuant to Section 257.3-8, Title 40 of the Code of Federal Regulations. LFG

(b) Landfill gas flare units and ~~or~~ LFG landfill gas extraction units may require permitting through the Commission's Air Management Division if such a device is deemed necessary.

(a) LFG (c) The presence of landfill gas and the concentrations of landfill gas present shall be ~~monitored~~ ~~evaluated~~ prior to, during and subsequent to the initiation of any solid waste excavation or site development ~~activity~~ activities. Data generated through the ~~monitoring~~ investigation of ~~LFG~~ landfill gas prior to excavation or development activities ~~may~~ shall be submitted as part of the ~~Site Assessment~~ Environmental Status Report required pursuant to Section 1-7.203(4)3).

(b) (d) All structures and enclosed spaces constructed atop or adjacent to areas where buried solid waste has been left in place or where ~~RSM~~ recovered screen material has been utilized as fill material, will require protection through the design, implementation and operation of a ~~LFG~~ Director approved landfill gas mitigation system.

(e) (e) The design of ~~LFG~~ landfill gas mitigation systems must provide for the effective collection and venting of ~~LFG~~ landfill gas that may migrate to and accumulate beneath structure slabs, foundations, impervious surfaces ~~and~~ within structures and within enclosed spaces.

(d) (f) A routine ~~LFG~~ landfill gas monitoring schedule shall be developed and implemented. ~~LFG~~ at all sites requiring landfill gas mitigation. Landfill gas monitoring data shall be collected through the monitoring of ~~Commission~~ Director approved ~~mitigation~~ landfill gas monitoring systems, procedures, and protocols. Landfill gas monitoring systems may include exterior ~~LFG~~ landfill gas monitoring wells, and/or monitoring points, and interior monitoring devices. ~~LFG~~ Landfill gas monitoring data shall be submitted to the ~~Commission~~ Director in accordance with an approved reporting schedule.

(6) (g) At the conclusion of the term of a Director's Authorization, in the event that landfill gas concentrations are determined to exceed those limits specified as a condition of a Director's Authorization, the Authorized Party and the current property owner shall remain fully responsible for the continued mitigation, management and control of landfill gas. In this event, the Authorized Party and the real property owner shall:

1. Seek and obtain a Renewed Director's Authorization prior to the Director's Authorization expiration date, or;

2. Seek to obtain closure of the Director's Authorization and the associated requirements wherein the current real property owner shall record a Director approved institutional Control, in the form of a covenant in favor of the Commission, in the public record.

a. The institutional control shall run with the land and shall require the maintenance of installed engineering controls, shall provide for the continuation of necessary landfill gas monitoring, shall provide for the retention of records associated with landfill gas monitoring data and shall provide for the operation and maintenance of any active or passive landfill gas mitigation systems until such time as landfill gas concentrations have been documented to remain below those limits specified as a condition of a Director's Authorization.

b. The institutional control shall be free and clear of any conflicting real property

encumbrances that may affect the enforcement of the prohibitions and covenants in the future.

(5) Leachate generated at all sites requiring a Director's Authorization pursuant to Section 1-7.202(1)(c) shall be managed in accordance with the following:

(a) The off-site discharge of leachate is prohibited unless in accordance with a National Pollutant Discharge Elimination System (NPDES) permit, or other appropriate federal, State or local permit.

(b) Leachate may not be discharged on site unless specifically approved in writing by the Director and in accordance with the conditions of an approved Director's Authorization.

(c) Leachate may be re-infiltrated on site only into areas which can be demonstrated to be hydraulically up gradient of solid waste impacted areas and only within areas previously impacted by solid waste disposal. Leachate re-infiltration shall not exacerbate, expand or otherwise contribute to or increase existing groundwater contamination or existing groundwater impacts.

~~(c)(d)~~ Leachate may ~~require treatment prior~~ not be re-infiltrated unless properly treated to re-infiltration. The meet the appropriate ground water cleanup target levels of treatment required will be determined based upon site specific conditions and proposals as outlined in Chapter 62-777, F.A.C., Table I.

~~(7) RSM(6)~~ Recovered screen material proposed for onsite reuse and excavated solid waste shall be characterized, managed, reused, and disposed in accordance with the following:

(a) Recovered screen material shall not be reused without the installation of appropriate, Director approved engineering controls.

(b) Recovered screen material reuse shall require the recording of an institutional control in the form of a restrictive covenant, or other deed restriction, as appropriate, in the public property record(s).

(c) Recovered screen material reuse shall not exacerbate, expand or otherwise contribute to or increase existing groundwater contamination or existing groundwater impacts.

(d) Characterization, through laboratory analyses, of ~~RSM~~ recovered screen material proposed for onsite reuse is required.

~~(b)(e)~~ Analytical data from the in-situ sampling of solid waste and/or soil matrices may not be used to support a recovered screen material reuse proposal in lieu of data generated from the analysis of ~~RSM~~ recovered screen material.

~~(c) RSM(f)~~ Recovered screen material generated from solid waste which has been excavated from areas that can be conclusively shown to be filled solely with construction and demolition debris must, ~~at a minimum,~~ be analyzed for the laboratory parameters listed in Section 62-701.730 ~~(4)(b)4, F.A.C.8)(c), F.A.C., as appropriate for the characterization of a solid material.~~

~~(d) RSM(g)~~ Recovered screen material generated from solid waste which has been excavated from areas filled with solid waste other than construction and demolition debris, or from areas that do not otherwise meet the criteria outlined in Section 1-7.203(7) ~~(e)~~, must be analyzed for the parameters listed in Section 62-701.510 ~~(8)(d), 7)(a) and Section 62-701.510(7)(c), F.A.C., as appropriate for the characterization of a solid material.~~

~~(e)(h)~~ The minimum sampling frequencies at which both discrete and composite ~~RSM~~ recovered screen material samples will be obtained shall be in accordance with ~~Section 62-713.510(4)(b), F.A.C. Each~~ the following:

1. In association with recovered screen material volumes of less than 100 yd³ or less than 140 tons, one (1) discrete and one (1) composite sample shall be obtained.

2. In association with recovered screen material volumes of 100 yd³ to less than 500 yd³ or of 140 tons to less than 700 tons, three (3) discrete and three (3) composite samples shall be obtained.

3. In association with recovered screen material volumes of 500 yd³ to less 1,000 yd³ or of 700 tons to less than 1,400 tons, five (5) discrete and five (5) composite samples shall be obtained.

4. In association with each additional 500 yd³ or each additional 700 tons of recovered screen material, one (1) additional discrete and one (1) additional composite sample shall be obtained.

5. Composite recovered screen material samples shall be comprised of no less than four (4) randomly selected sub-samples ~~in accordance with Section 62-713.510(6)(a)2, F.A.C.,~~

~~(f) The~~ (i) Regardless of the nature of any recovered screen material reuse proposal, the onsite reuse of ~~RSM~~ recovered screen material exhibiting hazardous waste characteristics is prohibited.

~~(g) RSM(j)~~ Recovered screen material found not to exceed leachability-based Soil Cleanup Target Levels, as established in Chapter 62-777, F.A.C., Table II, may be reused onsite in accordance with the following:

1. ~~RSM~~ Recovered screen material shall be placed no less than six inches (6") above the elevation of seasonal high ~~water~~ ground water elevation.

2. Direct human exposure ~~of RSM~~ to recovered screen material shall be prevented through the

design and implementation of Director approved site specific engineering controls.

3. Reuse of ~~RSM~~recovered screen material found to exceed ~~Residential~~residential use-based Soil Cleanup Target Levels, as established in Chapter 62-777, F.A.C., Table II, shall require the recording of an institutional control in the form of a restrictive covenant, or other deed restriction, as appropriate, in the public property record(s).

~~(h)~~(k) The onsite reuse of ~~RSM~~recovered screen material found to exceed leachability-based Soil Cleanup Target Levels, as established in Chapter 62-777, F.A.C., Table II, is prohibited unless the requirements of Sections 1-7.203~~(76)~~(gj)1, 1-7.203~~(76)~~(gj)2 and 1-7.203~~(76)~~(gj)3 are met, and the reuse proposal is in accordance with a Remedial Action Plan approved by the ~~Commission~~Director. ~~Remedial Actions Plans may also require approval by the Department~~

~~(i)~~(l) Responsible parties must be advised that Remedial Actions Plans submitted in accordance with Section 1-7.203(7)(j) may also require approval by the Department.

(m) The locations, dimensions, configurations and elevations of all ~~RSM~~recovered screen material reuse areas must be documented on ~~as-built site plans or site diagrams~~professionally certified record drawings.

~~(j)~~(n) Unprocessed/or un-separated, non-hazardous solid waste excavated from ~~Historic solid~~Solid waste ~~Disposal Areas~~Disposal Areas and non-hazardous ~~RSM~~recovered screen material requiring disposal shall be disposed at a Class I solid waste disposal facility permitted by the Department. Disposal of unprocessed or un-separated excavated solid waste and non-hazardous recovered screen material at a Department permitted Class III disposal facility shall not be assumed but may be approved ~~by the Commission~~ with appropriate analytical testing, as determined by the ~~Commission~~Director, and on a case specific basis.

~~(k)~~(o) ~~Excavated Processed or separated excavated~~ solid waste ~~which has been processed/separated~~ shall be disposed at an appropriately permitted solid waste disposal facility or ~~permitted hazardous waste disposal facility~~.

(7) In association with all development and redevelopment projects, the real property owner(s) shall record, in the public record, a Director approved institutional control in favor of the Commission. Recorded institutional controls shall:

(a) Identify and ensure the protection and continued maintenance and upkeep of all engineering controls installed in accordance with an approved Director's Authorization.

(b) Identify all areas where solid waste has been left in place; all areas of soil impacts exceeding the Chapter 62-777, F.A.C., Residential Use Based Soil Cleanup Target Levels (SCTLs) and all areas of RSM reuse.

(c) Restrict the use of the property or portions of the property based on site specific conditions and based on the Director approved development or redevelopment plans.

(d) Require inspections and inspection reporting in accordance with the conditions of an approved Director's Authorization.

(e) Prohibit the installation of any water well or the drilling for water on the site without the specific written approval of the Director.

1-7.204 Landfills.

(1) Landfills in Hillsborough County shall comply with the standards and criteria contained in Section 62-701.340, F.A.C.

(2) Landfills shall at a minimum comply with the standards and criteria contained in Sections 62-701.400, 62-701.410, and 62-701.430, F.A.C. -

(3) Operational standards and requirements shall be in compliance with Section 62-701.500, F.A.C., and monitoring requirements shall be consistent with Section 62-701.510, F.A.C.

(4) Landfill operators shall be appropriately trained in accordance with Section 62-701.320(15), F.A.C., or as otherwise required by law.

(5) Special waste handling at landfills shall conform to the standards and criteria contained in Section 62-701.520, F.A.C.

(6) Landfills shall be subject to the closure and long-term care procedures, criteria and standards contained in Sections 62-701.600, 62-701.610, and 62-701.620, F.A.C.

1-7.205 Recovered Materials Processing Facilities and Waste Processing Facilities.

(1) Any person proposing to operate, maintain, construct, expand or modify a recovered materials processing facility or solid waste management facility not specifically requiring permitting pursuant to Department rule shall

submit to the Director an application for said operation pursuant to Section 1-7.202(1)(d) prior to implementation.

(2) Solid waste management facilities which are waste processing facilities shall comply with the criteria and standards contained in Section 62-701.710, F.A.C.

(3) Waste processing facilities which receive and process only road base materials and aggregate, roadway demolition debris, roadway construction debris, and/or materials which are considered as clean debris are not required to obtain a Director's Authorization provided the following criteria are met:

(a) The materials received and processed are strictly limited to those materials considered as clean debris, cured asphalt and cured asphalt debris, soils, aggregate and/or other materials which are widely accepted and commonly utilized in the construction and repair of roadways, highways, and paved parking surfaces.

(b) The materials received at the facility have been separated at the site where the material is generated or at a properly permitted or Authorized waste processing facility.

(c) No waste separation or segregation activities take place at the facility.

(d) No solid waste requiring removal and/or off-site disposal is generated through waste receipt and processing activities.

(e) The materials produced at the facility are utilized in the construction and/or repair of roadways, highways, paved parking surfaces or other similar projects approved by the Director.

1-7.206 Clean Debris and Construction and Demolition Debris.

(1) Clean debris may be used as fill in accordance with Section 62-701.730(15), F.A.C. The use of clean debris as fill is hereby granted a Director's Authorization provided its placement does not constitute violations of other Commission rules or Hillsborough County land development ordinances.

(2) Construction and demolition debris may only be disposed at an appropriate disposal facility permitted in accordance with the criteria and requirements of Section 62-701.730, F.A.C.

~~1-7.208~~ ~~1-7.207~~ ~~Solid Waste Combuster Ash.~~

~~The management of solid waste combuster ash residue shall comply with the criteria and requirements of Chapter 62-702, F.A.C. Composting Facilities and, Yard Trash Processing Facilities, and Beneficial Use of Processed Yard Trash.~~

(1) Solid waste management facilities which use composting technology to process solid wastes other than yard trash and clean wood shall comply with the provisions, prohibitions and standards of Chapter 62-709, F.A.C.

(2) Solid waste management facilities which process yard trash and/or clean wood into other usable materials, such as compost, mulch, soil amendment(s) or ~~top soil~~ topsoil are considered yard trash processing facilities and are regulated pursuant to Section 1-7.205(1). Yard trash processing facilities shall, at a minimum, comply with the provisions, prohibitions, and standards of Sections 62-709.320 and ~~62-709.330~~, F.A.C.

(3) Sites or facilities which are maintained and operated in compliance with Chapter 62-709, Florida Administrative Code and which, through normal business operations, generate, store and process yard trash on-site for use in association with those normal business operations, and which manage no greater than a cumulative 500 cubic yards of material, shall be exempt from the requirement to obtain a Director's Authorization.

(4) Land application of processed yard trash, on property owned, controlled or where legal authority or permission has been granted, to cumulative depths not to exceed twenty-four inches (24") is considered a beneficial use and does not require the obtainment of a Director's Authorization. Land application of mulch or other processed or non-processed yard trash regardless of depth is prohibited in wetlands or other surface waters.

(a) Land application of yard trash which is not mulch and which does not meet the criteria for consideration as mulch and land application of processed yard trash or mulch to cumulative depths greater than twenty-four inches (24") is considered disposal of solid waste.

(b) No person shall store, process, or dispose of solid waste except at an FDEP permitted solid waste management facility, an EPC Authorized site or a facility exempt from EPC and FDEP permitting.

(c) No person shall store, process, or dispose of solid waste in a manner or location that causes air quality standards to be violated or water quality standards or criteria of receiving waters to be violated.

(d) Mulch shall not be placed or used as fill material in any natural or artificial body of water including ground water. Mulch shall not be placed or used as fill material in a wetland, in an open sinkhole or dewatered pit or in any area prone to frequent and/or periodic flooding.

(e) Mulch shall not be land applied solely as a means of and for the purpose of disposal. Disposal of mulch shall require a solid waste General Permit approved by the EPC and by the FDEP pursuant to Chapter 1-7, Rules of the EPC and Chapter 62-701, F.A.C.

(f) Mulch shall not be land applied in a manner that adversely affects trees, natural plant communities, significant wildlife habitats and essential wildlife habitats as defined and protected by the Hillsborough County Land Development Code.

(g) Mulch shall not be land applied in any designated floodplain unless in accordance with the requirements set forth in the Hillsborough County Land Development Code and the Hillsborough County Storm Water Management Technical Manual.

(h) Land application of mulch shall not alter surface water drainage patterns to the detriment of on-site or off-site wetland hydrology and/or neighboring properties.

(i) Mulch shall not be land applied to cumulative depths greater than twenty-four inches without an EPC Director's Authorization.

(k) Mulch intended for beneficial use shall not remain staged, stored or stockpiled in excess of twenty-four inches (24") in depth for periods exceeding fourteen (14) calendar days.

Part History – ~~Section amended 8/9/12 and effective 8/20/12,~~ adopted, MM/DD/YYYY; Effective date: MM/DD/YYYY

1-7.209208 Waste Tires.

The collection, transport, storage, processing and disposal of waste tires shall comply with the criteria, prohibitions, procedures and standards contained in Chapter 62-711, F.A.C.

1-7.209 Used Oil and Used Oil Filters.

(1) The management of used oil and used oil filters shall comply with the criteria and requirements of Chapter 62-710, F.A.C., Sections 62-710.201; 62-710-210(1); 62-710.210(2); 62-710-210(3); 62-710-210(4); 62-710-210(5) and 62-710-210(8); 62-710.401 and 62-710.850.

(2) In Hillsborough County all businesses that generate used oil or used oil filters shall be responsible for the generation or obtainment and the retention of documentation of proper used oil and used oil filter disposal or recycling.

(a) Documentation verifying proper used oil and used oil filter disposal or recycling shall be in the form of receipts, non-hazardous waste manifests, bills of lading, or other written records as appropriate.

(b) Documentation verifying proper used oil and used oil filter disposal or recycling shall be retained at the site where the used oil or used oil filters are generated.

(c) Documentation verifying proper used oil and used oil filter disposal or recycling shall be retained for a period of no less than three (3) years and shall be made available upon request.

Part History – adopted MM/DD/YYYY; Effective date: MM/DD/YYYY

Part III Hazardous Waste Management (Small Quantity Generators)

1-7.300 General Applicability.

The provisions of Chapter 62-730, F.A.C., Section 62-730.150, F.A.C. are adopted as specified therein except for Sections 62-730.150(2) and 62-730.150(6), F.A.C.

1-7.301 References, Variances and Case-By-Case Regulations.

The Commission adopts by reference Section 62–730.021, F.A.C.

Section Part History – ~~amended 8/9/12 and effective 8/20/12,~~ adopted, MM/DD/YYYY; Effective date: MM/DD/YYYY

1-7.302 Identification of Hazardous Waste.

The Commission adopts the criteria and standards referenced by Section 62-730.030 F.A.C. for identifying hazardous waste and ~~conditionally exempt~~very small quantity generator requirements.

1-7.303 Prohibitions.

(1) No person shall discharge, cause or permit the discharge, of hazardous waste to the soils, air, surface water, or ground water in Hillsborough County, unless the discharge is in compliance with federal, state, and local

regulations.

(2) No person shall discharge, cause or permit the discharge, of hazardous waste to a septic tank, oil/water separator, or other system of waste management which is designed to discharge into soils, air, surface water, or ground water, unless the discharge is in compliance with federal, state, and local regulations.

(3) No person shall manage hazardous waste in violation of any federal, state, or local regulations.

(4) No person subject to inspection pursuant to Section 403.7234 F.S. shall fail to pay the small quantity generator notification/verification fee required pursuant to Section 1-6.03(6) of the Commission's rules upon written notification that they are classified as a potential small quantity generator of hazardous wastes.

1-7.304 Generators of Hazardous Waste.

All generators of hazardous waste in Hillsborough County shall comply with the standards and criteria required by Sections 62-730.160(1), (3), (4), (6) and (7), F.A.C.

1-7.305 Transfer Facilities.

All transfer facilities in Hillsborough County shall comply with the standards and requirements contained in Section 62-730.171, F.A.C. except for subsection (1), and a copy of each record, report and plan required therein shall be submitted to the Commission within the time frames provided.

1-7.306 Hazardous Waste Treatment, Storage and Disposal Facilities.

Owners and operators of hazardous waste treatment, storage and disposal facilities in Hillsborough County shall comply with subsection 62-730.180(2), F.A.C.

1-7.307 Specific Hazardous Wastes and Types of Hazardous Waste Management Facilities.

The application of recycled materials to land, the recovery of precious metals, reclamation of lead acid batteries, the burning of hazardous wastes in furnaces, and the posting of warning signs at suspected or confirmed contaminated sites shall comply with the standards in Section 62-730.181, F.A.C.

1-7.308 Land Disposal Restrictions for Hazardous Waste.

All land disposal of hazardous waste shall comply with the restrictions and record keeping requirements of Section 62-730.183, F.A.C.

1-7.309 Standards for Universal Waste Management.

The management of universal wastes shall comply with the criteria and requirements of Section 62-730.185, F.A.C.

[Part History – adopted MM/DD/YYYY; Effective date: MM/DD/YYYY](#)

Part IV Site Rehabilitation.

1-7.400 Brownfields.

As [it](#) pertains to proposals for Brownfields Site Rehabilitation, Chapter 62-~~785~~[780](#), F.A.C., is hereby adopted by reference except for Section 62-~~785~~[780](#).650 [Risk Assessment](#).

1-7.401 Petroleum Cleanup.

As [it](#) pertains to petroleum contaminated sites, Chapter 62-~~770~~[780](#), F.A.C., is hereby adopted by reference except for Section 62-~~770~~[780](#).650 ~~and Section 62-770.890, F.A.C.~~

1-7.402 Cleanup Standards.

As [it](#) pertains to the standards and criteria for contaminated site cleanup, Chapter 62-777, F.A.C., is hereby adopted by reference in its entirety.

[Part History – adopted MM/DD/YYYY; Effective date: MM/DD/YYYY](#)

[Rule History:](#)

Adopted 8/10/78

[Amended 10/90](#)

Amended 12/21/95
Amended 10/17/02
Amended 8/9/12; Effective 8/20/12



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 8.b.

Date of EPC Meeting: September 21, 2023

Subject: Rule Adoption Public Hearing to consider amendments to the EPC Noise Pollution Rule, Chapter 1-10, Rules of the EPC

Agenda Section: Public Hearing

Division: Air Division

Recommendation: Adopt the proposed amendments to the Noise Pollution Rule, Chapter 1-10, Rules of the EPC, and authorize staff to make typographic corrections as needed.

Brief Summary: Pursuant to EPC Act and Chapter 1-2, Rules of the EPC, a Noticed Public Hearing shall be held by the Commission to adopt or amend a rule. EPC staff drafted proposed amendments to Chapter 1-10 to update definitions, clarify various sources and activities that are exempt from EPC sound level limits, and unify certain exemptions with those of Hillsborough County's noise ordinance. Two public workshops were held.

Financial Impact: No Financial Impact

List of Attachments: Proposed Amended Chapter 1-10, Rules of the EPC (Draft version dated September 14, 2023)

Background:

The EPC Noise Pollution Rule, Chapter 1-10, Rules of the EPC, addresses noise pollution from various sound sources throughout Hillsborough County and regulates noise on a decibel scale. EPC maintains concurrent jurisdiction in all municipalities in Hillsborough except where EPC has exempted certain noise generating activities (e.g. residential, agriculture, mobile sources) or locations (e.g. Ybor City Historic District). The last significant amendments were adopted by the EPC Commission in September 2008. The EPC staff propose rule amendments to clarify certain noise exemptions, unify certain exemptions with those of Hillsborough County's ordinances, and to create maps that codify existing and proposed areas where the EPC exempts its noise regulations for music and entertainment in limited locations in the City of Tampa. Other proposed changes are non-substantive and are intended to simply update citations, definitions, and other issues that have developed in the past 15 years.

The most notable or substantive revisions for consideration are as follows:

- Separating the combined agricultural and residential exemption into two separate exemptions.
- Updating the agricultural exemption to clarify applicable State preemptions.

- Updating residential source exemption to include generators, compressors, etc.
- Replacing the EPC's construction hours of operation noise exemption with the exemption in Hillsborough County Noise Ordinance, thus creating uniform exempt hours of operation. The EPC may still require reasonable abatement measures.
- Replacing the EPC's school related noise exemption with the public athletic facilities/school activities exemption in Hillsborough County Noise Ordinance, thus unifying the exemptions.
- Updating exemption to include holiday/special events recognized by local, state and federal governments, as opposed to the current rule that identifies select events for exemption.
- Clarifying the regulation of commercial power generators.
- Creating maps in lieu of the existing narrative description to re-codify existing areas where noise from music and entertainment within limited areas of downtown City of Tampa is currently exempt from EPC regulations. Staff is also proposing to add Midtown and additional areas of downtown. Staff recommends these existing areas remain exempt and future delineated areas become exempt because data measured by EPC's sound monitoring devices may be distorted by multiple noise generating venues simultaneously operating and by interferences created by numerous walls and buildings that can cause reflection and diffraction issues affecting the noise data results. The EPC defers to City of Tampa's authority under their own Noise Ordinance.

EPC staff hosted numerous stakeholder meetings with municipalities, other government partners, and other interested parties. EPC staff presented the draft to the Hillsborough County Agriculture Economic Development Council. Additionally, the EPC staff have conducted two public workshops with citizens and stakeholders to review the proposed amendments and seek feedback. The workshops were held on August 15, 2023 (in person at the EPC) and August 22, 2023 (virtually). EPC posted the meetings on our website and sent over 700 e-mail notices of the two workshops on August 4, 2023, to various entities that have interacted with the EPC regarding noise, including HOAs and Civic Associations. Further, EPC staff provided a brief overview of the changes to the EPC Business Feedback group on August 8, 2023, and the Environmental Feedback group on August 10, 2023. The rule drafts, notice of workshops, and notice of the opportunity to send comments were provided via group e-mails, social media postings, and website postings.

Pursuant to noticing requirements in the EPC Act and Chapter 1-2, Rules of the EPC, this public hearing was timely noticed via publication in a newspaper of general circulation. The EPC enhanced its noticing by publishing in two newspapers, as follows: in the Tampa Bay Times Hillsborough County Edition on September 6, 2023, and the La Gaceta weekly publication on September 8, 2023. Further, the draft rule has been published on the EPC website since August 4, 2023, and the most current draft was updated by September 14, 2023.

EPC staff requests the Commission conduct a public hearing to take comment and to adopt the rule amendments as proposed, and in the event any typographical errors are discovered after the hearing, approve staff to make the necessary non-substantive corrections, prior to filing the rule with the Clerk.

DRAFT REVISION 9-14-2023

**RULES OF THE
ENVIRONMENTAL PROTECTION
COMMISSION
OF HILLSBOROUGH COUNTY**

**CHAPTER 1-10
NOISE POLLUTION**

- 1-10.00 Intent**
- 1-10.01 Definitions**
- ~~**1-10.02 (Repealed)**~~
- 1-10.03 Sound Level Limits**
- 1-10.04 Exemptions**
- 1-10.05 Competitive Motor Vehicle Events**
- 1-10.06 Waiver or Variance**
- ~~**1-10.07 Shooting Ranges (Repealed)**~~
- 1-10.08 Methodology**

1-10.00 INTENT

Chapter 1-10 is intended to regulate noise pollution originating from stationary sources and traveling outdoors to other receiving properties. It is not the intent of this rule to regulate noises under all circumstances.
*Section History - new September 18, 2008 and
Effective September 18, 2008*

1-10.01 DEFINITIONS

- (1) Definitions contained in Chapter 84-446, Laws of Florida, as amended, (EPC Act) apply to this rule.
- (2) The following specific definitions shall apply to this rule:
 - (a) **A-Weighted Sound Level** - The electronic filtering in sound level meters that models human hearing frequency sensitivity and is denoted as dBA (decibel A-weighting) sound pressure level decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dBA.
 - (b) **Background Sound Pressure Level** – The equivalent sound pressure level of all encompassing noise present in the environment in the absence of sound from the source in question.
 - (c) **Commercial Property** - All property which is used primarily for the sale of merchandise or goods, or for the performances of a service, or for office or clerical work. Hotels and motels are considered Commercial Property under this rule.
 - (d) **Decibel (dB)** - A unit of measurement of sound pressure equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).
 - (e) **East Bay Raceway** – A one-third (1/3) mile dirt track located at 6311 Burts Road in Hillsborough County.
 - (f) **Emergency** - Any occurrence or set of circumstances involving actual or imminent physical trauma, natural resource damage, or property damage which demands immediate action.
 - (g) **Emergency Response** - Any action performed for the purpose of preventing or alleviating an emergency, including training exercises related to emergency response.
 - (h) **Industrial Property** - Any property which is used primarily for manufacturing, processing, or distribution.
 - (i) **Leq** – Abbreviation for the equivalent sound pressure level which means the constant sound level

that, in a given situation and time period, conveys the same sound energy as the actual time-varying sound.

(j) **Octave Band** - All of the components in a sound spectrum whose frequencies are between two sine wave components separated by an octave.

(k) **Public Right-Of-Way** - Any street, avenue, boulevard, highway, sidewalk, or alley or similar place normally accessible to the public which is owned or controlled by a government entity.

(l) **Real Property Line** - An imaginary line along the ground surface, and its vertical plane extension, which separates the real property owned, rented or leased by one person from that owned, rented or leased by another person, excluding intrabuilding real property divisions.

(m) **Residential Property** - All property designed for people to live and sleep, and which is not commercial or industrial as defined in this rule, including but not limited to homes, dwellings, individual plots within a mobile home park, hospitals, shelters designed for human habitation, schools, nursing homes, and parks that have sleeping accommodations. Residential property must be located (sited) in conformance with applicable county or municipal zoning and land use provisions. For purposes of this rule, a legal non-conforming residential use is considered in conformance, and therefore residential property.

(n) **RMS (Root Mean Square) Sound Pressure** - The square root of the time averaged square of the sound pressure.

(o) **Sound** - An oscillation or alteration in pressure, stress, particle displacement, particle velocity, or other physical parameter, in an elastic medium; or, an auditory sensation evoked by the alterations described above. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(p) **Sound Level** - A logarithmic ratio of sound power or parameters related to power such as pressure, referenced to the threshold of human hearing, 20 micropascals. The weighted sound pressure level obtained by the use of a metering characteristic and weighting scale as specified in American National Standards Institute specifications for sound level meters ANSI S1.4 1983 (R2006) or in successor publications or amendments, including but not limited to ANSI S1.4A 1985 (R2006). If the weighting employed is not indicated, the A-weighting shall apply.

(q) **Sound Level Meter** - A device used to measure sound pressure level, or weighted sound pressure level, or octave band sound pressure level, and this device is of Type 1~~Type 2~~ or better, as specified in the American National Standards Institute Publication S1.4-1983 (R2006) or its successor publication or amendments, including but not limited to ANSI S1.4A-1985 (R2006).

(r) **Sound Pressure** - The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by the presence of energy, which accompanies the passage of a sound wave.

(s) **Sound Pressure Level** - Twenty times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micropascals. The sound pressure level is denoted SPL and is expressed in decibels.

(t) **Shooting Range** - An area designated and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport, law enforcement, or military shooting.

(u) **Stationary Source** - Any facility or activity that has the potential to emit sound and exists at or is designed to be operated as a unit at a fixed location, although parts of the source may move while the source is in operation. This includes but is not limited to all commercial and industrial facilities, e.g., ~~remote control vehicle facilities and~~ relocatable rock crushing machinery and/or equipment operations.

(v) **Unamplified Sound** - Sound that is not amplified by any mechanical or electronic means.

Section History - amended September 18, 2008 and

Amendment Effective September 18, 2008; amended xx/xx/xx and amendment effective xx/xx/xx.

1-10.03 SOUND LEVEL LIMITS

(1) Sound levels limits pursuant to this rule shall be measured with a sound level meter as an Leq for a 10-minute period of time. Sound levels which exceed the limits set forth in this rule for the receiving land when

measured at or within the property line of the receiving land, or as measured at the locations described in 1-10.03(1) or 1-10.03(4), are a violation of this rule. The point of sound level compliance for receiving residences or other sleeping accommodations on agricultural and park land shall be measured at a distance no greater than 150 feet from the receiving residence or sleeping accommodation.

(2) **Sound Level Limits.** Unless otherwise specified in this rule, the below limits in this subsection and Subsection 1-10.03(4) shall be measured using the A-Weighted Sound Level (dBA).

Receiving Land Use Category	Time	Sound Level Limit, dBA
Residential	7 a.m.-10 p.m.	60
	10 p.m.-7 a.m.	55
Commercial	At all times	65
Industrial	At all times	70

(3) **Octave Band Residential Sound Level Limit.** In addition to the sound level limits of 1-10.03(2), for any source of sound which impacts on residential property, the maximum allowable sound level limit for the individual octave bands whose centers are 63, 125, and 250 Hertz (Hz) shall not exceed the below listed decibel levels, measured as an Leq for a 10-minute period of time:

Octave Band	Time	Sound Level Limit - dB
63 Hz	7 a.m.-11 p.m.	70
63 Hz	11 p.m.-7 a.m.	65
125 Hz	7 a.m.-11 p.m.	64
125 Hz	11 p.m.-7 a.m.	59
250 Hz	7 a.m.-11 p.m.	57
250 Hz	11 p.m.-7 a.m.	53

~~(4) **Air Conditioning and Air Handling Equipment, Pumps and Compressors Sound Level Limit.** No person shall operate or cause to be operated any air conditioning or air handling equipment, or any pumps and compressors, in such a manner as to exceed 55 dBA as an Leq for a 10 minute period of time, measured from a distance of 40 feet or more from the source across a residential real property line at any time of the day or night.~~

~~(5) The Florida State Fairgrounds is subject to the sound level limits in this section and to all other provisions of this rule.~~

~~(6) No person shall generate, cause, let, permit, allow, or allow to continue any violation of this rule. If the same type of violation continues after the property owner is notified by the Environmental Protection Commission (EPC) or a law enforcement officer, then the property owner, even if he or she did not generate sound, will be deemed to have allowed the violation to continue and must comply with this rule.~~

~~Section History – amended September 18, 2008 and~~

~~Amendment Effective September 18, 2008; amended xx/xx/xx and amendment effective xx/xx/xx.~~

1-10.04 EXEMPTIONS

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

(1) The emission of sound from a person or any mechanical device, apparatus, or equipment for the purpose of alerting persons to the existence of an emergency, or sounds generated in the performance of emergency response duties, including training.

(2) The unamplified sound of the human voice.

(3) The unamplified sounds of animals.

~~(4) Except as conditioned below, reasonable operation of equipment or conduct of activities related to residential or Sounds from agricultural communities operations on land classified or zoned for agricultural purposes. This also includes agritourism as provided by Florida law. Non-agricultural operations on land classified or zoned for agricultural purposes may be regulated under this Rule if no other exemption applies.~~

(5) Sound originating from within a residential structure and its appurtenances, including but not limited to a yard, barn, shed, gazebo, garage, patio, compressors, air conditioning/air handling equipment, or pool pump motor or filter. Sounds related to operating, residing in, and maintaining a residence, including but not limited to, lawn care, home repair or maintenance, and refuse collection. Residential generators are also exempt, see Subsection 16 for additional detail.

(6) Commercial operation of motorized lawn, garden, or other outdoor maintenance equipment on any classification of property is exempt between the hours of 7 a.m. and 10 p.m.

~~(75) Sounds occurring at places of religious worship and related to those religious activities.~~

~~(86) Except where regulated elsewhere in this rule, events directly related to Gasparilla, New Year's Eve, Guavaween, the Super Bowl, the Strawberry Festival, the Hillsborough County Fair, all federal holidays recognized by local, State, or federal governments; parades; and festivals authorized by the State, federal, or local government; competitive sporting events; and the two week public fairs or expositions as defined in Chapter 616, F.S. However, this fair and exposition exemption does not apply to Florida State Fair but for any concerts at the Amphitheatre during the Florida State Fair Authority's annual state fair that same two weeks.~~

(97) Mobile sources, including but not limited to:

(a) motor vehicles, including recreational motorized vehicles, remote control devices, and their associated stereos or other sound generating devices attached to the vehicles. This does not include racing vehicles and racing venues addressed elsewhere in this rule, nor does it include ~~slamming of dump truck tailgates or~~ the sounds associated with the unloading of non-watercraft vehicles; and

(b) the operation of trains, ships, personal watercraft, and aircraft; and

(c) portable sound systems used for personal entertainment.

~~(108) Common carrier stations, including but not limited to bus stations, transit malls, train stations, ships' wharves and docks, and airports.~~

~~(119) Shooting ranges pursuant to Section 823.16, F.S., discharge of firearms, and the shooting sounds associated with paintball facilities.~~

~~(1240) Noise pollution Sounds generated by governmental entities and their agents related to construction, operation, and maintenance of transportation projects and facilities. Sounds generated by the Florida Department of Transportation and its agents arising from activities at existing or future transportation facilities, or appurtenances thereto, on the State Highway System, pursuant to Section 335.02 (4), F.S.~~

(1344) Construction activity for which the County or municipality has issued all applicable permits, or which is exempt from County or municipality permits, provided such activity occurs between 6:00 a.m. and 8:30 p.m. and Construction activities occurring between the hours of 7 a.m. and 6 p.m. Monday through Friday, 8 a.m. and 6 p.m. Saturday, and 10 a.m. and 6 p.m. Sunday are exempt if reasonable precautions are taken to abate the noise pollution generated from those activities. Reasonable precautions shall include but not be limited to noise pollution abatement measures such as enclosure of the noise pollution source, use of acoustical blankets, and change in work practice. Construction activities occurring at all other times

shall be subject to this Rule.

~~(12) Noise pollution originating from within a residential structure and its appurtenances.~~

~~(1413) Sound ~~Noise pollution~~ related to music or other entertainment originating from entertainment or musical events in the Central Business District, the Ybor City Historic District, and the Channel District, as delineated in the City of Tampa Code of Ordinances. the areas delineated in the two maps below which are incorporated as part of this subsection.~~

~~(1544) Activities conducted on public athletic facilities and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to athletic, musical, and entertainment events at private or public schools. Athletic, musical, other school events, or practice for them, conducted under the auspices of public or private schools, but not limited to activities on school grounds.~~

(16) Sounds from power generators, including the following:

(a) generators operating during testing, maintenance, periods of emergency, or power failure;

(b) generators for residential structures; and

(c) generators for hospitals, nursing homes, critical care facilities, government utilities, and other critical government infrastructure.

However, generators supporting commercial or industrial properties not qualifying for an exemption above must comply with the noise regulations of this rule.

Section History – amended September 18, 2008 and

Amendment Effective September 18, 2008; amended 8/9/12 and effective 8/20/12-; amended xx/xx/xx and amendment effective xx/xx/xx.

1-10.05 COMPETITIVE MOTOR VEHICLE EVENTS

(1) Sound Level Limits -

(a) Sound levels from facilities holding competitive motor vehicle events shall be subject to the sound level limits of subsections 1-10.03(2) and (3), except for East Bay Raceway.

(b) Sound levels from competitive motor vehicle events at East Bay Raceway shall not exceed 78 dBA as an Lmax, measured with a sound level meter at or within receiving residential property.

(c) In the event East Bay Raceway adds a new racing event at its existing track, builds a new facility, or expands or relocates its existing racetrack then that new racing event and/or new, relocated, or expanded facility is subject to the sound level limits in subsections 1-10.03(2) and (3).

(2) Authorization Required -

(a) Compliance with all applicable requirements of section 1-10.05 shall be demonstrated by completing a Competitive Motor Vehicle Events form provided by EPC staff and submitting it to the EPC Executive Director:

(1) prior to construction, alteration, or expansion of any competitive motor vehicle racing facility; and

(2) annually, by November 1 of each year for all racing activities planned for the following calendar year.

The Competitive Motor Vehicle Events form is maintained by the Air Management Division.

(b) Any racing facility submitting a complete Competitive Motor Vehicle Events form, including all requirements of this section, shall be eligible to operate unless the Executive Director makes a written decision of ineligibility within 45 days of receipt of the complete form, except new or modified race tracks will require a modeling demonstration as described in subsection 1-10.05(3)(a) be affirmatively approved by the Executive Director prior to operation or construction. Any incomplete form shall be returned to the applicant for further information, and the 45-day EPC review will re-start upon Executive Director's receipt of the amended form. Any person aggrieved by the decision of the EPC Executive Director may challenge the decision pursuant to Section 9 of the EPC Act and Section 1-2.30, Rules of the EPC.

(3) General Requirements for All Motor Vehicle Racing Facilities.

(a) In addition to the form required above, no person shall begin construction or begin operation of a new racing facility, or begin alteration or expansion of a racing facility existing as of the date of this rule without first submitting a written demonstration of ability to comply with the sound level limits in Section 1-10.05(1)(a). The demonstration shall include but not be limited to modeling by an acoustical expert to demonstrate compliance. The demonstration will be reviewed by EPC staff, and construction, alteration or expansion can not commence prior to approval by the Executive Director. The Competitive Motor Vehicle Events form shall be submitted in conjunction with the demonstration.

(b) All motor vehicles participating in racing events shall be inspected by designated raceway personnel prior to each race to ensure that appropriate sound-attenuating mufflers are being used during the racing event and all preliminary race activities. A written record of the following information shall be maintained: the date, time and place of inspection; the person performing the inspection; description of vehicle inspected; and results of the inspection.

(c) The Competitive Motor Vehicle Events form will include the following information for all races scheduled for the next calendar year:

(1) Name, address, and telephone number of the person, firm, corporation, or other entity responsible for the racing events.

(2) Name and telephone number of a responsible party who may be reached during all racing events.

(3) Location, dates and times of all racing events for that calendar year, including the beginning and ending times of the races, and the number and types of vehicles in the races.

(4) Descriptions of all measures, methods, and work practices used to reduce the volume of noise pollution generated by the racing events.

(5) Provisions for employee training, including familiarization with the requirements of this rule.

(6) Provisions for trackside and boundary noise pollution monitoring.

(d) All records of operations, inspections and noise pollution monitoring shall be retained on site for a minimum of two years and made available to EPC staff upon request.

(e) All racing facilities shall allow EPC personnel access to the premises at reasonable times to copy records, inspect or monitor the operations to determine compliance with EPC rules.

(f) Any deviation from the hours of operation or dates of operation shall be reported to EPC staff within 24 hours of the occurrence.

(4) Specific Requirements for East Bay Raceway.

(a) During East Bay Raceway's current annual race event, which is not to exceed six consecutive weeks, the races shall end by 10:30 p.m. with a one-hour extension for delays.

(b) East Bay Raceway's regular season races on Friday and Saturday nights shall end by 11:30 p.m. with a thirty-minute extension for delays. Regular season Sunday races are for emergency make-up only and are allowed from 5 p.m. to 10:30 p.m.

(c) East Bay Raceway shall keep records of race stop times for each race day, and the number and types of vehicles participating in each event.

*Section History – amended September 18, 2008 and
Amendment Effective September 18, 2008.*

1-10.06 WAIVER OR VARIANCE

Persons may apply for a waiver or variance to all or a portion of this rule by filing an application pursuant to section 1-2.50, Rules of the EPC.

*Section History – amended September 18, 2008 and
Amendment Effective September 18, 2008.*

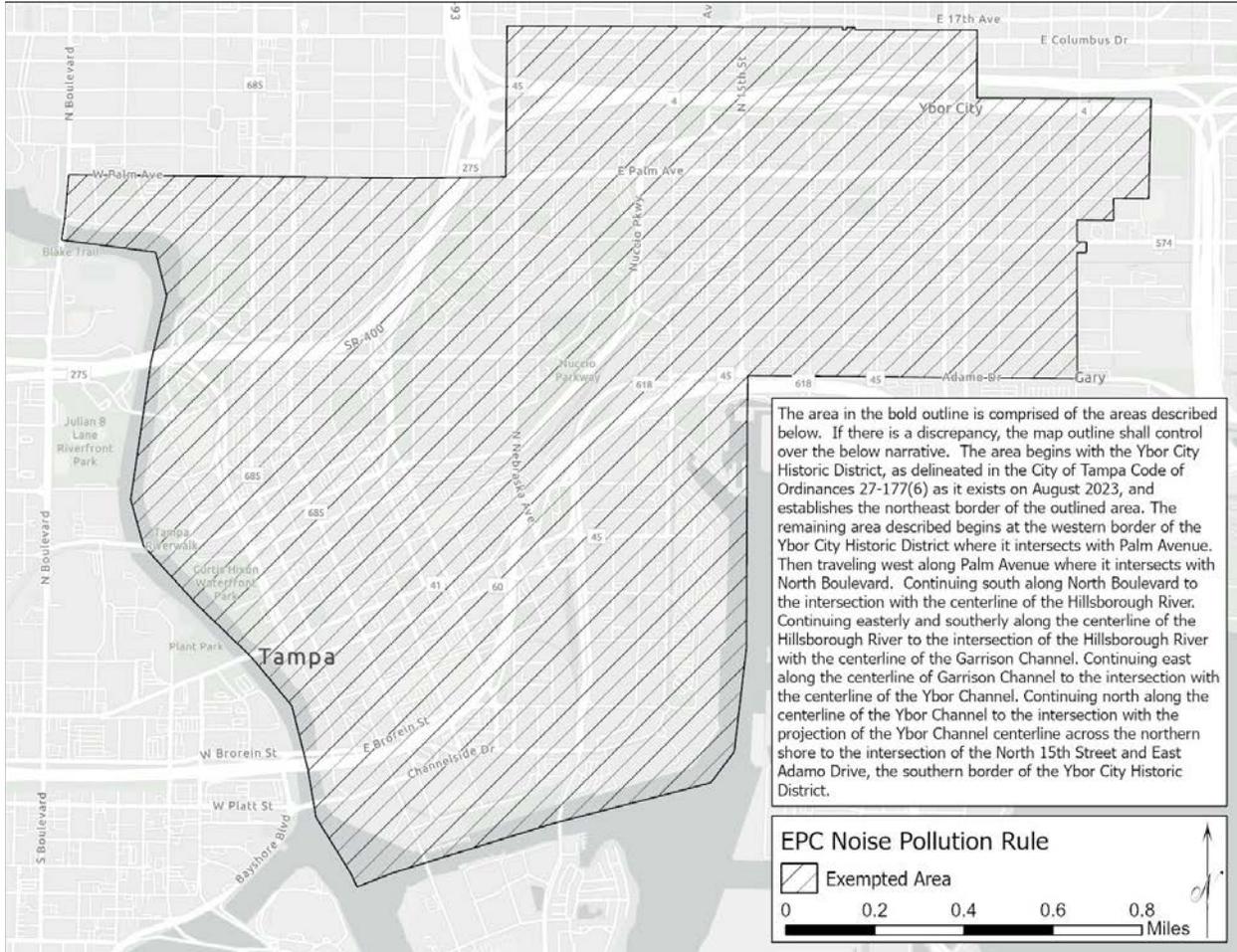
1-10.08 METHODOLOGY

EPC staff maintains standard operating procedures for measuring sound levels and analyzing them in

accordance with the provisions of this rule. These procedures are not adopted by this rule and may be revised as necessary to address updated standards applicable to the measurement and analysis of sound levels.

Section History – new September 18, 2008 and Effective September 18, 2008.

Map 1 for exemption detailed in Subsection 1-10.04(14), Rules of the EPC



Map 2 for exemption detailed in Subsection 1-10.04(14), Rules of the EPC



Rule History:
Adopted 6/10/76
Amended 4/13/78
Amended 9/1/82
Amended 11/15/84
Amended 11/11/88
Amended 10/05/89
Amended 05/23/90
Amended 05/22/91
Amended 06/20/95
Amended 01/17/96
Amended 12/19/00
Amended 08/19/04
Amended via Circuit Court Ruling 02/25/05
Amended 09/18/08 and Effective 09/18/08
Amended 8/9/12 and Effective 8/20/12
Amended X/X/XX and Effective X/X/XX



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.a.

Date of EPC Meeting: September 21, 2023

Subject: Final Order Hearing in James Anderson vs Joel Juren and EPC, Case No. 22-EPC-015

Agenda Section: Regular Agenda

Division: Wetlands Division

Recommendation: Conduct a Final Order Hearing and issue a Final Order

Brief Summary: The EPC issued a permit to Joel Juren (Appellee) to allow creation of a 25-foot wide swim and open water access area and other nuisance vegetation control from a waterbody at his home in Riverview via a Miscellaneous Activities In Wetlands Authorization (MAIW Permit #75762) dated December 1, 2022. James Anderson (Appellant), a neighbor, filed an administrative appeal in opposition to the MAIW Permit. In accordance with Chapter 1-2, Rules of the EPC, the appeal was transferred to an EPC Hearing Officer to conduct an evidentiary hearing. The matter was heard and the Hearing Officer issued a Recommended Order, which recommends that the MAIW Permit be issued. The Commission must now sit in their quasi-judicial capacity to consider the Hearing Officer's Recommended Order, consider the parties' legal arguments for and against the order, and then render a Final Order. Each party has 10 minutes to present their arguments. No new evidence may be presented or considered.

Financial Impact: No Financial Impact

List of Attachments: 1) MAIW Permit; 2) Amended Notice of Appeal; 3) Aerial Map; 4) Hearing Officer's Recommended Order; 5) Anderson's Exceptions to the Recommended Order; 6) Joint Response to Exceptions; 7) Joint Prehearing Stipulation; and 8) Evidentiary Hearing Transcript

Background:

Pursuant to Section 9 of Chapter 84-446, as amended, Laws of Florida (EPC Act), any person aggrieved by an action (e.g. – permit) of the EPC's Executive Director may appeal it to the Commission. The "appeal" process referred to in the EPC Act is an administrative hearing. The hearing is very similar to a civil trial. The Hearing Officer reviews the evidence and arguments from all parties and then the Hearing Officer gives a written recommendation to the Commission as to whether the permit should be issued, modified, or denied.

Joel Juren (Appellee) applied for a permit to create a 25-foot wide swim and open water access area and for other nuisance vegetation control in a pond in the backyard of his home located at 10510 Sedgebrook Drive, Riverview, Florida 33569. On behalf of the Executive Director, the EPC Wetlands Division reviewed the application and issued a Miscellaneous Activities In Wetlands Authorization (MAIW Permit #75762) dated December 1, 2022, which authorized the requested impacts (Attachment 1). James Anderson (Appellant),

a neighbor to Mr. Juren, filed an amended notice of appeal (Appeal) in opposition to the MAIW Permit alleging, among other things, that the MAIW Permit does not comply with the EPC's Wetlands Rule (Chapter 1-11, Rules of the EPC) and that the use of herbicides to remove the vegetation does not result in the least environmentally adverse impacts nor does it minimize wetland or surface water impacts (Attachment 2). In accordance with Chapter 1-2, Rules of the EPC, the Appeal was transferred to an EPC Hearing Officer, Patricia Petruff, Esq., to conduct an evidentiary hearing. The matter was heard on June 2, 2023. The Hearing Officer issued a Recommended Order on July 27, 2023 (Attachment 4), finding in favor of Mr. Juren and the EPC and recommending the MAIW Permit be issued.

Pursuant to Chapter 1-2, the parties are allowed to file exceptions to the Recommended Order, arguing what facts or laws the Hearing Officer may have erred in finding or concluding, respectively. Appellant Anderson filed "Exceptions to Recommended Order" on August 7, 2023, at 5:03 p.m. (Attachment 5). Appellees Mr. Juren and EPC filed a "Joint Response to Appellant James Anderson's Exceptions to Recommended Order" on August 17, 2023 (Attachment 6). The Exceptions filed by the Appellant argue certain findings and conclusions of law in the Recommended Order should be revised, while the Joint Response to the Exceptions filed by the EPC and Mr. Juren argue that the exceptions should be rejected and that the Recommended Order should be adopted without changes. This proceeding is designed to hear those limited arguments regarding the exceptions and responses to the exceptions.

The Commission will sit in a quasi-judicial capacity to consider the Hearing Officer's Recommended Order, consider the parties' legal arguments for and against the decision, and then render a Final Order. Pursuant to Section 1-2.35, Rules of the EPC, the three parties may each present ten minutes of oral argument to the Commission on issues raised in the exceptions to the Recommended Order and the responses to the exceptions. The Commission must only consider documents in the record. No new evidence may be taken by the Commission or provided by the parties or the public. The only evidence that can be discussed is evidence that was accepted by the Hearing Officer.

Thus, the Commission is charged with rendering a Final Order after hearing arguments from all the parties during the Commission meeting. Pursuant to Section 1-2.35(f), "The Commission shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of the EPC Act or the rules enacted pursuant to said act." Moreover, Section 1-2.35(e), Rules of the EPC explains that the "Commission may reject, reverse or modify a finding of fact only if it finds that the fact is not supported by substantial competent evidence in the record." Among other things, this means the Commission should not attempt to reweigh the evidence presented at the evidentiary hearing or judge the credibility of one witness over another.

During the Commission meeting, the Commission may seek legal advice from the Commission Counsel, who was not a party to the proceedings before the Hearing Officer. After the oral arguments, the Commission Counsel will provide guidance, the Commission may discuss the arguments, the Commission may ask questions of any party, and the Commission should vote on a Final Order. Nothing in the Final Order can be contrary to the EPC Act or rules. The decision of the Commission will be memorialized in the Final Order drafted by Commission Counsel after the meeting, presented to the Chair for signature, and issued to the parties.

ATTENTION
YOU ARE REQUIRED TO
REPLANT YOUR SHORELINE
WITH FLORIDA NATIVE
AQUATIC PLANTS.

Replanting is required within
a specific timeframe.

Please see the enclosed
permit for details.



Environmental Excellence in a Changing World

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 Sterlin Woodard, P.E. WETLANDS DIVISION

December 1, 2022

Joel B. Juren
mrbjuren@gmail.com
 10510 Sedgebrook Drive
 Riverview, FL 33569

Applicant:	Joel B. Juren
EPC Review Number:	75762
Type of Authorization:	MISCELLANEOUS ACTIVITIES IN WETLANDS AUTHORIZATION FOR 25-FT WIDE SWIM AND OPEN WATER ACCESS AND NUISANCE VEGETATION CONTROL
Project Address:	10510 Sedgebrook Drive, Riverview, FL 33569
STR:	26-30S-20E
Folio:	076836-7916
Expiration Date:	December 1, 2025

Dear Mr. Juren:

An environmental review has been conducted for the above described project by the staff of the Wetlands Division of the Environmental Protection Commission of Hillsborough County (EPC). Based on this review, EPC has determined that the above referenced project, as proposed and conditioned by this authorization, is of nominal consequence to the wetland or other surface water in Hillsborough County and qualifies for approval under Sections 1-11.09(1)(c), 1-11.10(1)(b) and 1-11.10(1)(c), Rules of the EPC. Therefore, Joel B. Juren (Applicant) is authorized to maintain a 25-foot wide swim and open water access and conduct nuisance vegetation control activities subject to the site plan and conditions listed below.

COMMON NAME	SCIENTIFIC NAME	METHOD OF CONTROL
Vines		Hand Removal / Hand Tools / Herbicide
Torpedograss	<i>Panicum repens</i>	
Peruvian primrosewillow	<i>Ludwigia peruviana</i>	
Dogfennel	<i>Eupatorium spp.</i>	
Cuban bulrush	<i>Cyperus blepharoleptos</i>	

1. In areas outside of the 25-foot wide swim and open water access corridor, only those plant species listed in the table above are authorized for removal. These plant species can only be controlled within the treatment area depicted on the site plan. **If native, non-nuisance species are removed under this authorization, replanting of those species will be required.**
2. Within thirty (30) days after completion of the authorized removal and replanting activities, please email EPC staff at WetlandsCompliance@epchc.org. Please provide any pictures or documents and include your Permit Number in the subject line. EPC staff may conduct an inspection of the site to verify compliance with the conditions of the subject permit.
3. The applicant may control 100% of the emergent and floating leaf zone plants in the 25-foot wide swim and open water access corridor in the swim access area depicted in the attached site plan.
4. Replanting of native, non-nuisance species is required within the wetland and approximately in the location specified area on the site plan to ensure adequate erosion control and/or re-vegetation of native species. The replanting must occur by the deadline described below and in conformance with the additional criteria in this permit.
5. The above listed plants are controlled in an area designated as a revegetation zone which must be replanted within 60 days of nuisance vegetation removal. The “revegetation zone” is identified as the green line on the site map. If the site is not planted as required or any permit condition is not complied with the Applicant will be subject to enforcement to bring the site into compliance with this permit and applicable laws.
6. To ensure adequate erosion control and to encourage native re-vegetation, a minimum of 40 plants shall be installed in no less than 2 row(s). The planted species shall be placed two (2) foot on center, meaning each plant must be at least two (2) feet away from plants on the same row and two (2) feet away from plants on adjacent rows. Planting rows can be combined with planting clusters or trees. Clusters of no more than twenty (20) plants per clump can also be planted to minimize the number of rows required for planting. Alternatively, twelve (12) plants can be substituted for by the planting of one (1) desirable, native wetland trees, such as cypress. At least one row of 20 plants must be installed if the balance is traded for clusters or native wetland trees.
7. To maintain plant diversity in the lake, revegetation zones shall be planted with a combination of at least two of the following: Arrowhead (*Sagittaria lancifolia / latifolia*), Banana Lily / Floating Hearts (*Nymphoides aquatica*), Egyptian Knotgrass (*Paspalidium geminatum*), Lake Rush / Rush Fuirena (*Fuirena scirpoides*), Maidencane (*Panicum hemitomon*), Pickerelweed (*Pontederia cordata*), Soft Rush (*Juncus effusus*), Fragrant Waterlily (*Nymphaea odorata*) and / or other native desirable aquatic plants, according to their specific depth requirements.
8. There must be at least eighty percent (80%) survival of the planted species within the revegetation zone one hundred and eighty (180) days after planting. Additional plantings may be required until the eighty percent 80% survival is achieved. It shall be the responsibility of

the applicant to notify EPC Wetlands staff in writing, when the planting for revegetation has been completed.

9. The control of native vegetaion such as pickerelweed, duck potato, knotgrass, maidencane, aterlilies, native bulrushes and all other non-authorized vegetation is prohibited.
10. No native tree or shrub species may be removed from the wetland.
11. The management of the targeted species in and around non-targeted, native vegetation should be conservative to allow for the expansion of native aquatic plants.
12. With the exception of the swim access area, this authorization does not allow for any portion of the wetland area to be maintained free of vegetation.
13. All removed vegetation must be properly disposed of or placed within an acceptable upland area situated so as to prevent the return of these materials back into the wetland or other surface water.
14. All herbicide proposed for use must be approved for use in aquatic systems by the Environmental Protection Agency (EPA), and must be applied in accordance with the label directions. If herbicides are proposed for use in removing nuisance species, care must be taken so that only the target nuisance species are treated. If native non-nuisance species are removed or destroyed by this treatment, replanting of these species will be required in addition to the replanting required in this permit. Any re-planting of unauthorize native non-nuisance species that were removed must be completed within 30 days of the unauthorized destruction/removal or within 30 days of written request of the EPC. Other conditions may be requested to ensure re-planting success.
15. The Applicant shall make a reasonable effort to notify potential users of the treated waters listing the types of herbicides and length of any use restrictions imposed by the label. Prior notification shall be accomplished by notices distributed to residents or signs posted access point(s) near the authorized area.
16. Heavy machinery is not allowed within the wetland area. All work must be accomplished by hand or with the use of hand-held equipment if not treated with herbicide.
17. If the target vegetation is to be removed by jetting, then the water pump must be shut off when not in use to avoid unnecessary disturbance to the water body. If jetting is employed, the installation of turbidity curtains shall be required.
18. The work performed under this authorization shall not be conducted on any property, other than that owned by the Applicant, without the prior written approval of that property owner.
19. This authorization does not convey to the Applicant or create in the Applicant any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the Applicant, or convey any rights or privileges other than those specified in this authorization and Chapter 1-11 or other applicable rules.

20. **Once you remove any plants you agree to fully complete the terms of this permit, including but not limited to the replanting requirements contained herein.**
21. All efforts must be undertaken to prevent any erosion or turbid water from being discharged offsite into wetlands and/or waters of the County. Turbid discharges that exceed twenty-nine (29) Nephelometric Turbidity Units above background levels are a violation pursuant to Chapter 1-5, Rules of the EPC (Water Quality Standards rule). The erosion or discharge of sediments into wetlands is a violation of Chapter 1-11, (Wetland Rule). Silt screens or other methods of erosion/turbidity control may be required. It is the responsibility of the owner/developer to insure the installation of adequate erosion control barriers prior to the commencement of any site work. These erosion control devices must be maintained in good condition throughout the construction process and until all loose soils have stabilized. It is strongly recommended that all erosion control devices be regularly inspected during construction and modified if conditions warrant.

INFORMATIONAL COMMENTS

- The issuance of this authorization does not relieve the Applicant of the responsibility to comply with all applicable Florida Fish and Wildlife Conservation Commission (FWC) rules nor is the Applicant relieved of the responsibility to obtain any other required permits. You may contact the FWC representative, Charles Thompson, via phone at (863) 578-1121 or email Charles.Thompson@myfwc.com or contact the FWC main office via phone at (863) 534-7074 for further information regarding permitting for plant removal.
- Please be advised that this approval applies only to the development proposal as submitted, and in no way does it provide EPC approval to any other aspect of the review process. In addition, this approval does not imply exemption from obtaining all proper permits from other governmental agencies.
- A permit is not required for hand removal of fallen tree limbs, woody debris, and trash, but EPC recognizes it may occur as part of this activity.

If you have any questions, please contact Chantelle Lee at (813) 627-2600 ext. 1358 or leec@epchc.org.

Sincerely,



Dessa Clock
Environmental Supervisor
Wetlands Division
Environmental Protection Commission
of Hillsborough County

Joel B. Juren
December 1, 2022
Page 6 of 9

cl/dc

ec: Charles Thompson, FWC, Charles.Thompson@MyFWC.com

Attachment: Site Plan

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 MISCELLANEOUS ACTIVITIES IN WETLANDS AUTHORIZATION

The Environmental Protection Commission of Hillsborough County gives notice of agency action of issuance of a “Miscellaneous Activities in Wetlands” authorization issued on December 1, 2022 to Joel B. Juren pursuant to the EPC Wetlands Rule Chapter 1-11 and Chapter 84-446, Laws of Florida, as amended. The EPC issued permit addresses approval for impacts to surface waters for the control of nuisance wetland plants in an unnamed pond at 10510 Sedgebrook Drive, Riverview, Hillsborough County (Folio # 076836-7916). 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

Joel B. Juren
December 1, 2022
Page 9 of 9

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.

Joel B. Juren
10510 Hedgebrook Dr.
Riverview Fl. 33569
Folio # 076836-7916

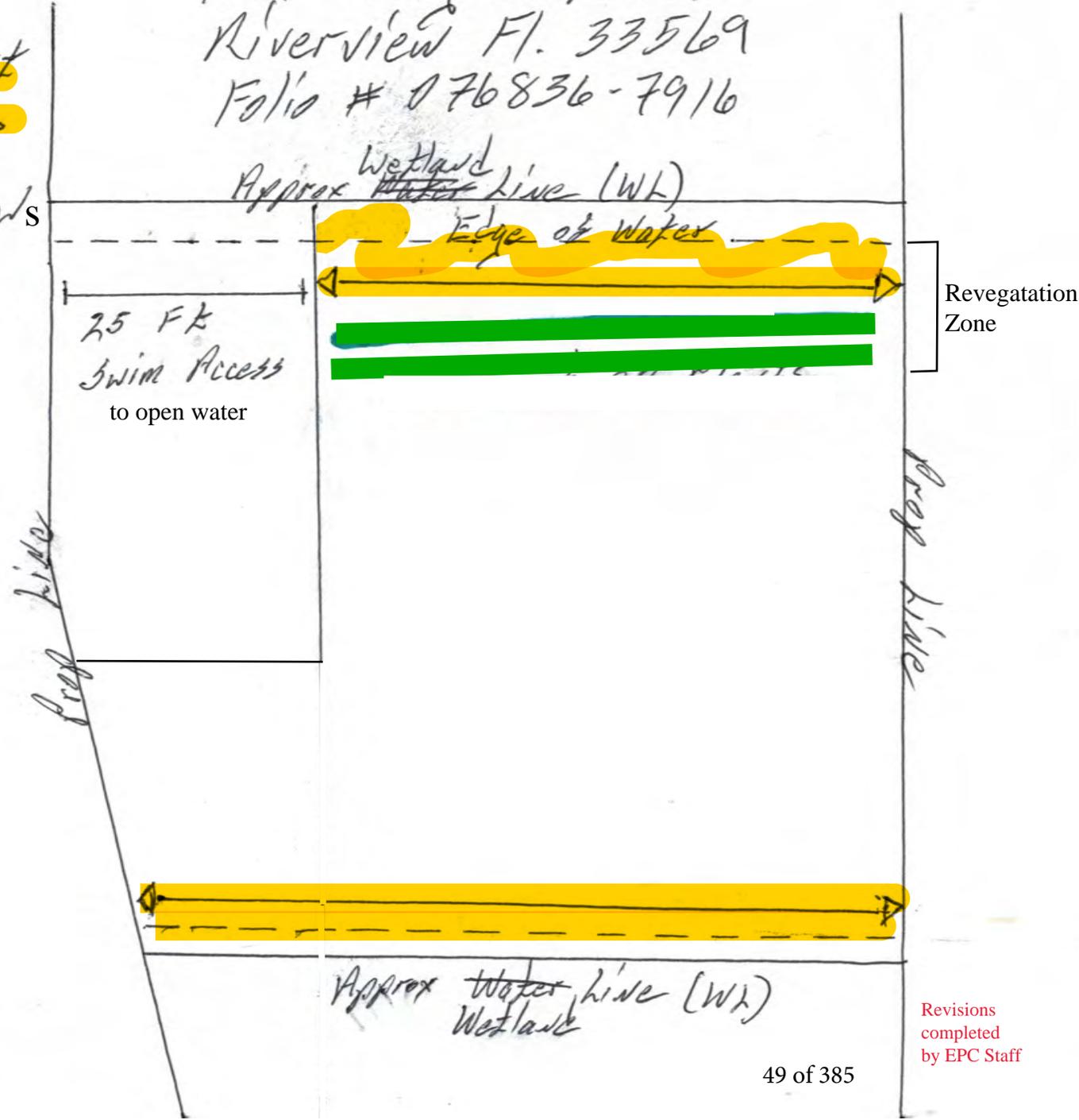
Denotes area for Nuisance
Vegetation Control Treatment

Denotes Replanting Rows

Approx WL =
Approximate
Wetland line

Denotes Edge
of Water

Treatment Methods:
Herbicide, Hand Tools
and Hand Removal



Revisions
completed
by EPC Staff

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

**JAMES ANDERSON,
Appellant,**

vs.

EPC Case No. 22-EPC-015

**JOEL JUREN and
ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY,
Appellees.**

**APPELLANT’S AMENDED NOTICE OF APPEAL OF
HILLSBOROUGH COUNTY (EPC) DECISION REVIEW NUMBER 75762**

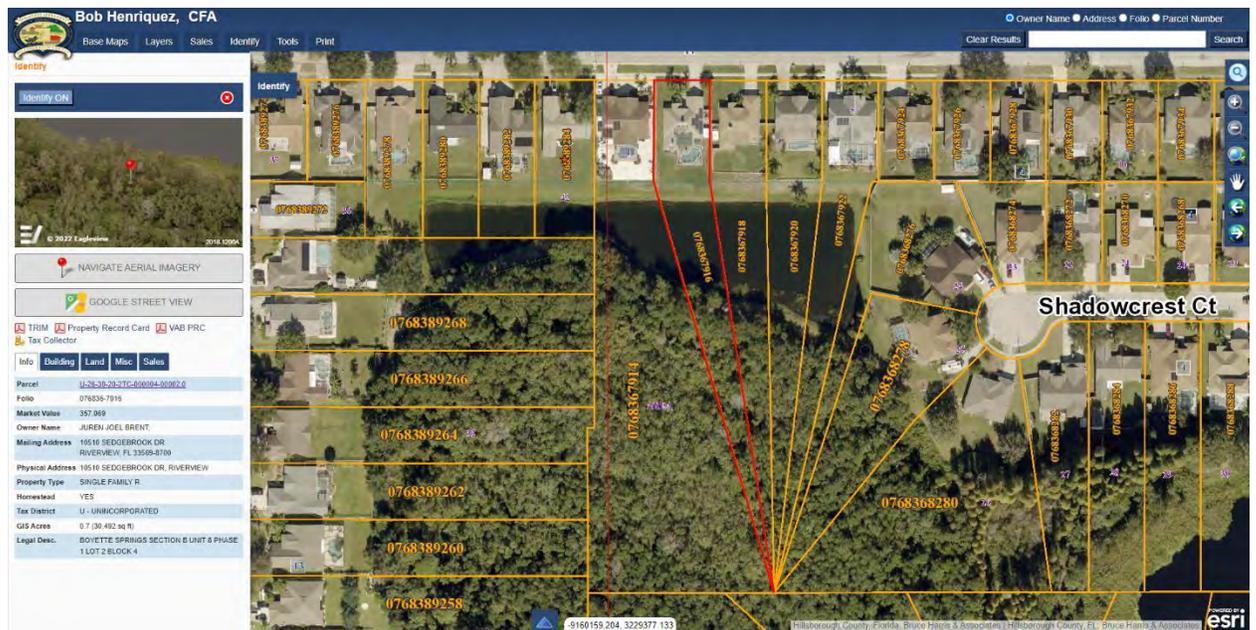
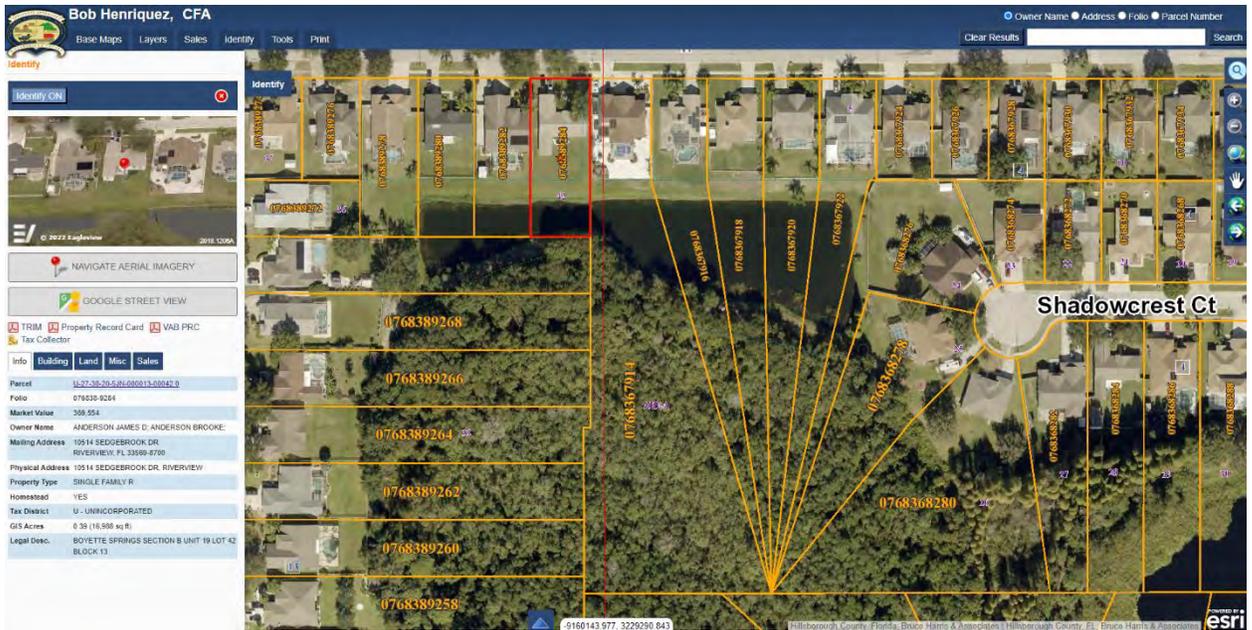
(1) Appellant

James Anderson
10514 Sedgebrook Drive Riverview, FL 33569
(727) 430-3494

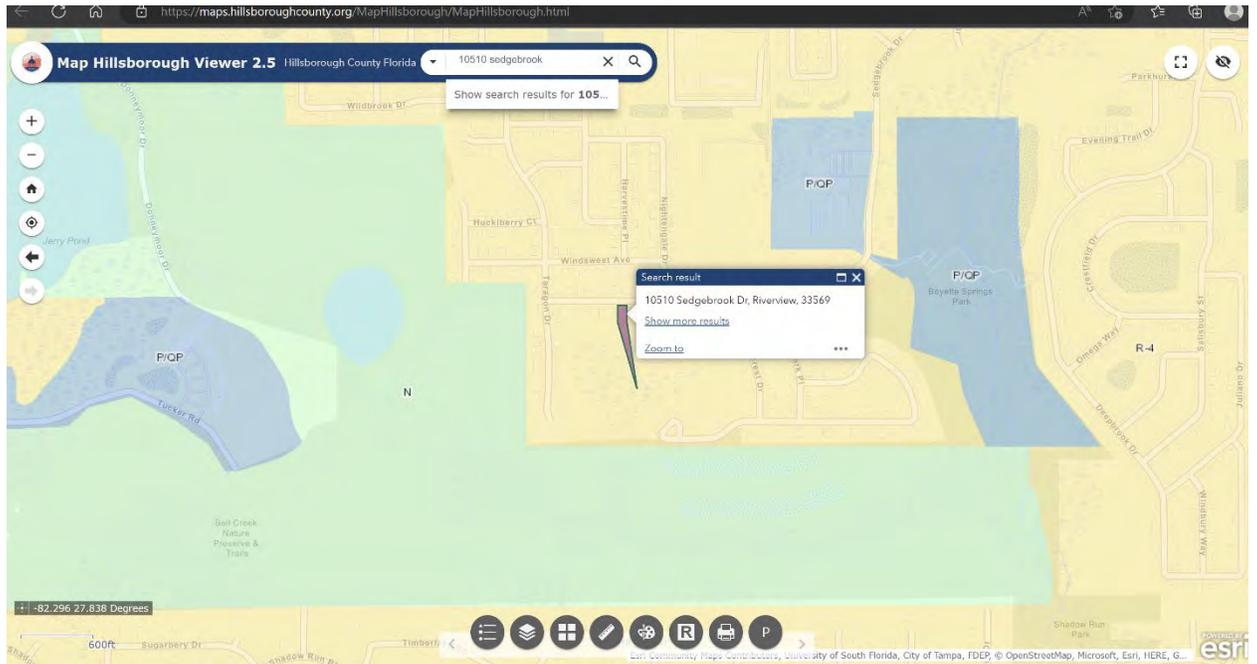
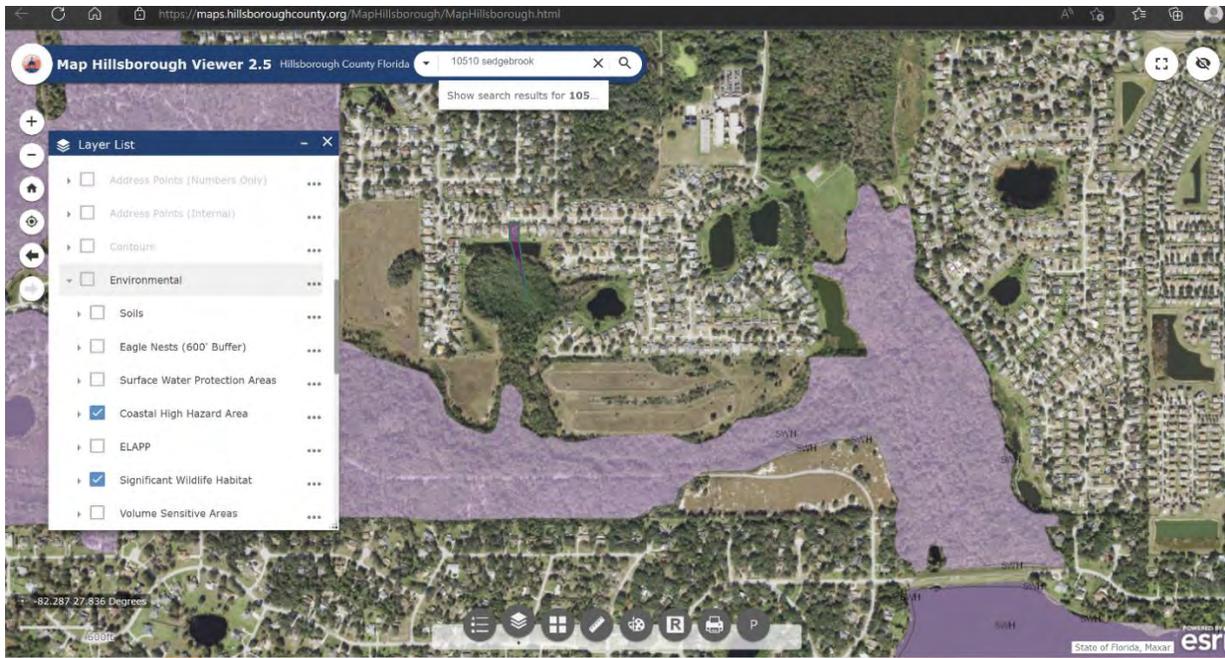
Appellant’s Representative

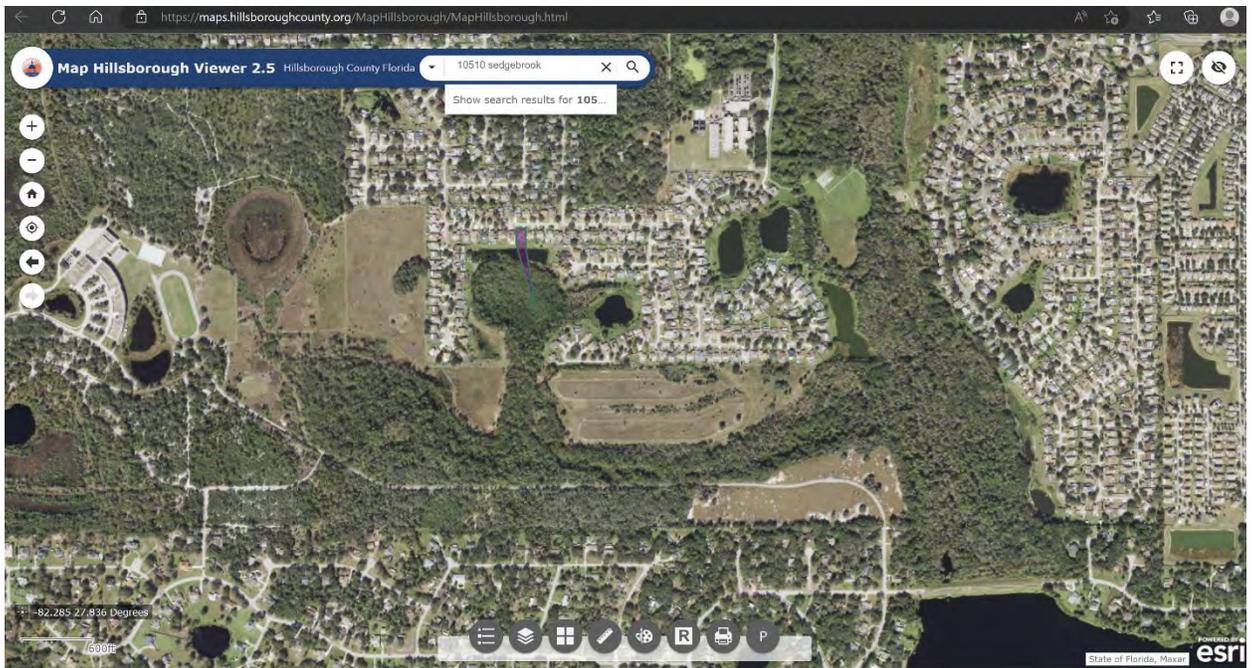
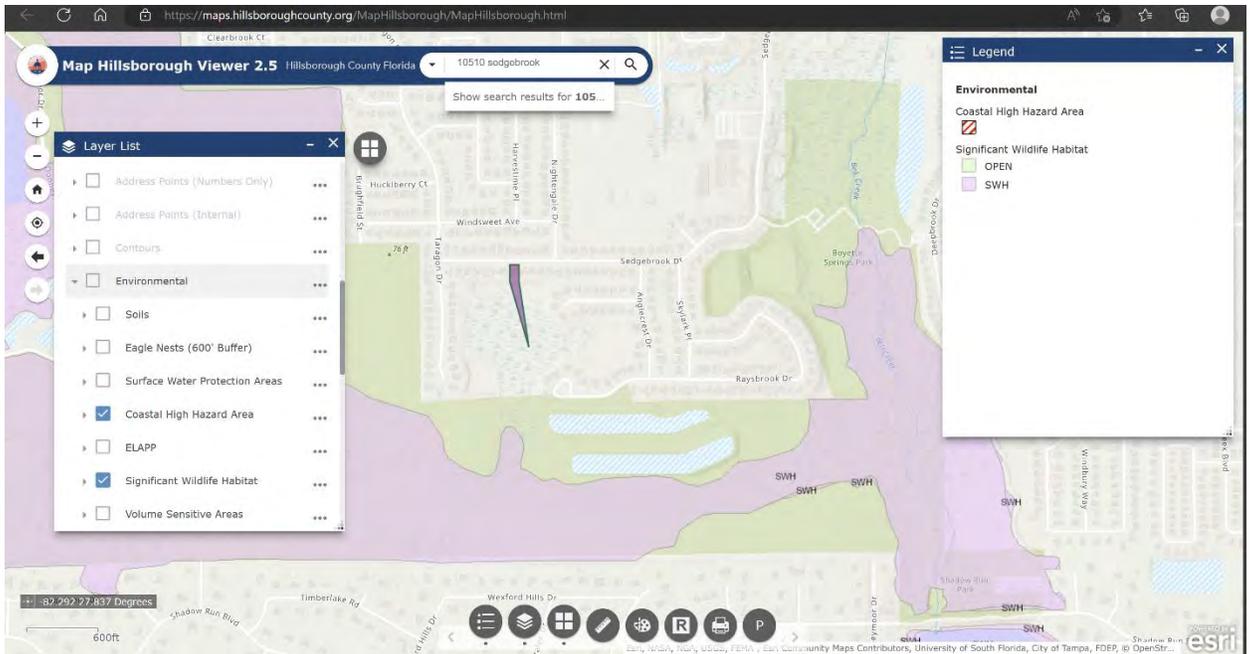
Jane Graham, Esq.
737 Main Street, Suite 100
Safety Harbor, FL 34695
(727) 291-9526

Mr. Anderson owns the property at 10514 Sedgebrook Drive, Riverview, FL 22569 which is separated by one property from the Juren property at 10510 Sedgebrook Drive. Mr. Anderson’s property extends through the same pond where Mr. Juren has been approved to apply herbicide. (See Hillsborough County Property Appraiser Maps below). There are no natural or artificial barriers in the pond which prevent water moving from Juren’s property to Anderson’s property. The herbicide application approved in this Permit will move onto the part of the pond on Anderson’s property. There is nothing in the permit that does or can prevent this.



Behind the pond is a wetland area with water that flows to a “significant wildlife habitat” and on to Bell Creek and the Alafia River (See images from Hillsborough Map Viewer below). Mr. Anderson enjoys the view of the environmental area beyond the pond, which is connected to a natural area that flows to Bell Creek.





For several years, Applicant Juren conducted unpermitted spraying and treatment of vegetation on and around Anderson’s property often without permission by Anderson to enter Anderson’s property. The Applicant’s recent contract was for the spraying and treatment of his property only, not other homeowners’ properties (attachment A). No notice

was provided to homeowners prior to spraying and treatments. Juren received the Permit prior to notifying all Sedgebrook Pond property owners of prior unpermitted and/or unauthorized spraying disturbed their quiet enjoyment and safety on their properties.

(2) Mr. Anderson was emailed a copy of the agency's decision from Chantelle Lee on December 19, 2022 at 9:16 am.

(3) The following are disputed issues of material fact:

- a. Whether the wetland or other surface water impacts have been minimized to the greatest extent practicable in the Permit, as required by Section 1-11.09(1)(c). Anderson contends impacts have not been minimized to the greatest extent practicable because herbicides are inappropriate for this area and treatments could be limited to mechanical or manual removal. Impacts have also not been minimized because there is possible method to prevent herbicide moving from Juren's pond area onto Anderson's pond area.
- b. Whether the Permit causes the least environmentally adverse impacts, as required by Section 1-11.09(1)(c). Approving herbicide application in a pond so closely connected to an environmentally sensitive area does not cause the least environmentally adverse impact.
- c. Whether the boundaries of the approved herbicide application approved under the Permit are limited to Applicant's property or even can be limited to Applicant's property given the laws of hydrology.
- d. Whether based on #3, when neighboring property owners are given reasonable notice of the activities.

(4) The specific facts that warrant reversal or modification of the Executive Director's proposed action are as follows:

- A. The Permit should be modified to delete herbicide treatment as a use.

B. Section 1-11.09(1)(c) requires (emphasis added),

Where the adverse impact is of nominal consequence to the wetland or other surface water, as defined by Section 62-340.600, F.A.C., the impact will be reviewed as a “Miscellaneous Activities in Wetlands” under Section 1-11.10. **Wetland or other surface water impacts under this authorization shall be minimized to the greatest extent practicable, unless defined herein by size, and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts;**

The treatment area in the permit is from the edge of the water all the way to the wetland.

The permit should explain how it causes the least environmentally adverse impacts, given the closeness of the proposed work to a delicate environmental area.

C. Sedgebrook Pond property owners must be notified by Hillsborough EPC staff, Mr. Juren or Mr. Juren’s Contractors when work will be done under this Permit.

D. The Permit should include a note that recognizes that Juren been noticed twice by Hillsborough EPC for unpermitted spraying or contracting of unpermitted spraying of his and others properties (see attachments B&C). EPC Environmental Scientist Bill Inch stated the most recent contractor (attachment A) was aware of Hillsborough regulations but did not comply. The contract was for Mr. Juren’s property only (Attachment A). No fining of this contractor occurred by the EPC. Both EPC inspectors took pictures of the defoliation from spraying. Bill Inch took pictures of an almost totally defoliated pond.

(5) Section 1-11.09(1)(c) requires,

Wetland or other surface water impacts under this authorization shall be minimized to the greatest extent practicable, unless defined herein by size, and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts

Permit #75762 fails to do so. Behind the Property Pond is a wetland area with water that flows to a “significant wildlife habitat” and on to Bell Creek and the Alafia River. The authorization allows the use of herbicide in a water body that is connected via stormwater structures to larger wetland areas and on to the Alafia River. EPC failed to conduct any analysis of the impacts of such herbicide use on the pond or connected wetland system. Additionally, Section 1.11.09(2) states, “Consideration shall be made of cumulative impacts of proposed development to the wetland system in combination with other developments which have been or may be proposed in the same drainage basin.” EPC has not considered downstream environmental impacts of herbicide treatment. The wetland conservation areas will be negatively impacted by herbicide treatment to the pond and littoral shelf. The EPC staff failed to consider any cumulative impacts of the proposed permit to the larger wetland system or within the Alafia drainage basin. Moreover, it is impossible to stop herbicides sprayed on Mr. Juren’s property within the pond from flowing onto Mr. Anderson’s part of the Pond.

- (6) Anderson requests the Commission reverse the permit and remand it with the following:
- a. Herbicides are deleted as a method of removal in the Permit;
 - b. The Permit contains details on how mechanical and manual removal will be conducted with the least environmentally adverse impact to the area;
 - c. The Permit contains an analysis of how cumulative impacts in the area may impact the activities authorized in the Permit and a statement that this Permit will not impact the larger wetland system or Alafia drainage basin;
 - d. The Permit will require the Applicant to notify potential uses when removal activities are scheduled to take place; and

- e. A statement that in the event Juren violates the terms of this Permit, future violations will be immediately referred to Enforcement and Applicant's prior history of unpermitted work will be considered for any fines or penalties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 17, 2023, a true and correct copy of the foregoing “Appellant’s Amended Notice of Appeal” has been furnished by email to Andrew Zodrow, Attorney, Environmental Protection Commission, 3629 Queen Palm Drive, Tampa, FL 33619 at zodrowa@epchc.org and Joel Juren at mrbjuren@gmail.com.

Respectfully submitted,

/s/Jane Graham

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APPELLEES' EXHIBIT 3

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ATTACHMENT 3

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

JAMES ANDERSON,

Appellant,

vs.

EPC Case No. 22-EPC-015

**JOEL JUREN and
ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY,**

Appellees.

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

Upon due notice, on June 2, 2023, a final hearing in the above-captioned matter was held in Tampa, Florida, by Patricia A Petruff, Esquire, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter “EPC”), on the Appellant James Anderson’s (hereinafter “Appellant”) Amended Notice of Appeal of the Miscellaneous Activities In Wetlands (MAIW Application) executed by the EPC Executive Director (hereinafter “Executive Director”) on December 1, 2022 authorizing the applicant Joel Juren (hereinafter “Appellee Juren”) to impact wetlands in Hillsborough County. The basis of the appeal was that the Permit did not comply with the requirements of Section 1.11, Rules of the EPC; specifically that the use of herbicides did not result in the least environmentally adverse impacts nor did it minimize wetland and surface water impacts to the greatest extent possible.

APPEARANCES

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ATTACHMENT 4

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For EPC Executive Director: T. Andrew Zodrow, Esq.
Environmental Protection Commission of Hillsborough County
3629 Queen Palm Dr.
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For Joel Juren: Pro Se
mrbjuren@gmail.com

STATEMENT OF THE ISSUE

This case involves the application for and subsequent issuance of Miscellaneous Activities In Wetlands Authorization #75762 (hereinafter “MAIW Permit”) for the purpose of nuisance vegetation control and the creation of a swim and open water access area located along the shoreline of the property located at 10510 Sedgebrook Drive, Riverview, Hillsborough County, Florida (hereinafter “Property”). The EPC reviewed the application under Chapter 1-11, Rules of the EPC (Wetlands Rule) and the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands (“Basis of Review” or “BOR”) referenced within Section 1-11.06(2), Rules of the EPC. Pursuant to Section 1-11.10(1), Rules of the EPC, nuisance vegetation removal and herbaceous vegetation removal for minor swim access areas not exceeding 25 feet of shoreline qualify as activities that are deemed of nominal consequence to a wetland and are eligible to be permitted as a “Miscellaneous Activities In Wetlands” Authorization. On December 1, 2022, the EPC Executive Director issued the MAIW Permit pursuant to Sections 1-11.10(1)(b) and 1-11.10(1)(c), Rules of the EPC. An initial/original Notice of Appeal was submitted by the Appellant on January 13, 2023. Subsequently, the Appellant, by and through his counsel, filed a motion to amend the appeal which was granted and on May 15, 2023 the

Appellant, submitted an Amended Notice of Appeal (hereinafter “Amended Appeal”). The question raised in the Amended Appeal was whether the authorized method of treatment in the MAIW Permit, the use of herbicides for vegetation control, complies with Section 1-11.09(1)(c), Rules of the EPC.

PRELIMINARY STATEMENT

On December 1, 2022, the EPC Executive Director issued the MAIW Permit pursuant to Sections 1-11.10(1)(b) and 1-11.10(1)(c), Rules of the EPC. The MAIW Permit authorized the use of herbicides to control vegetation for the purpose of nuisance vegetation removal and for the creation of a 25-foot Swim and Open Water access area on the pond. On January 13, 2023, the Appellant filed an appeal of the issuance of the MAIW Permit. On May 15, 2023, the Appellant filed an Amended Appeal pursuant to EPC Rule 1-2.30 (b) challenging the use of herbicides in the MAIW Permit for the control of vegetation. EPC filed a Motion for Summary Recommended Order which was denied on June 2, 2023. An evidentiary hearing was heard on June 2, 2023.

The EPC ordered a transcript of the final hearing and the parties were given fifteen (15) days from the date of filing of the transcript in which to file proposed recommended orders and argument. Transcript Page Numbers 261-262 [hereinafter (Tr. p 261-262)]. The transcript was provided to the parties on July 3, 2023. The transcript was provided by the EPC to the Hearing Officer on July 4, 2023. By agreement of the parties, the due date for proposed recommended orders was established as July 19, 2023. All parties submitted their proposed recommended orders on July 19, 2023 as required.

WITNESSES AND EXPERTISE

Appellee EPC called Dessa Clock who was accepted as an expert in the application of the EPC's wetland regulations, specifically Chapter 1-11 and the Basis of Review for purposes of miscellaneous activities in wetlands permitting (Tr. p 31, lines 20-25, p 33, lines 13-14) and Chantelle Lee who was accepted as an expert in the application of the EPC's wetland regulations, specifically Chapter 1-11 and the Basis of Review for purposes of miscellaneous activities in wetlands permitting (Tr. p 67, lines 7-12, p 69, lines 25-26, p 70, lines 1-7). Appellee EPC also called the applicant Joel Juren as a fact witness. The applicant Joel Juren also made a statement as a witness for himself. The Appellant called Deborah Chayet who was accepted as an expert witness in botany and nuisance plant management and removal. (Tr. p 147, lines 22-25) and the Appellant James Anderson as a fact witness.

EXHIBITS

JOINT EXHIBITS OF THE PARTIES:

1. Judicial Notice Documents
 - a. Special Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87 495.
 - b. EPC Administrative Procedures Rule Chapter 1-2, current version August 9, 2012.
 - c. EPC Wetlands Rule Chapter 1-11, current version July 17, 2008.
 - d. EPC Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands, current version May 20, 2022.
 - e. EPC Final Order Medero v. EPC, January 28, 2013
 - f. EPC Final Order Ogden v. Truex and EPC, June 22, 2015
 - g. EPC Final Order Vance v. Vath and EPC, August 8, 2015
 - h. EPC Final Order Criollo v. Johnsen and EPC, April 19, 2021
2. Miscellaneous Activities in Wetlands Permit (MAIW Permit) dated December 1, 2022

APPELLANT'S EXHIBITS:

1. File Worksheet
2. Contract with Solitude Lake Management
3. Email dated July 15
4. October 5th letter
5. Resume – Debbie Chayet

6. Photo of Flood Control Structure
7. Photograph of Rhexia
8. Photograph of Giant Bulrush
9. Photograph of Sagitaria
10. Photograph of Dogfennel
11. Photograph of Mock Bishopweed
12. Photograph of Hydrocotyle
13. Photograph of Elephant's Foot
14. Photograph of Water Oak
15. Photograph of Hempvine
16. Photograph of Four Spotted Pennant
17. Photograph of fragrant water lily and pewter grass
18. Photograph of flock of Black-bellied Whistling Ducks
19. Photograph of Phyla Nodiflora
20. Photograph of Sandhill Cranes
21. Photograph of Sandhill Cranes
22. Photograph
23. SWFWMD ERP Plans – “Boyette Springs Section B, Unit 19
24. Composite of Photos
25. Findings Report and articles – Debbie Chayet
26. EPC Plans historical (Boyette Springs Master Drainage Plan)

APPELLEE EPC's EXHIBITS:

1. Resume – Chantelle Lee
2. Resume – Dessa Clock
3. Aerial of Property
4. MAIW Application #75762
 - a. Application submitted September 23, 2022
 - b. 75401_ Site Inspection Notes and Photos – Used for 75762
 - c. 75762_ Site Photos
 - d. Request for Additional Information
 - e. 75762_ Revised Site Plan
 - f. File Worksheet

APPELLEE JUREN'S EXHIBITS

1. Abstract of Article
2. Information from EPA website about pesticide registration

FINDINGS OF FACT

1. Appellee EPC is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida (“EPC Act”), and the rules promulgated thereunder, including specifically the EPC Wetland Rule Chapter 1-11, in Hillsborough County Florida. (Joint Pre-hearing Stipulation of the parties dated May 17, 2023, hereinafter JPFS, page 6)

2. Appellee Juren owns the Property, more specifically identified as Folio #076836-7916, with physical address of 10510 Sedgebrook Drive, Riverview, FL 33659. (JPFS, page 8, Joint Exhibit 2, Tr. p 108, lines 23-24)

3. Appellant Anderson owns upland property located east of the Property, identified as Folio #076838-5150, with a physical address of 10514 Sedgebrook Drive, Riverview, FL 33659 (hereinafter “Appellant Property”). (JPFS, page 8, Tr. p 239, lines 3-4)

4. Both Appellant Anderson’s property and Appellee Juren’s property as well as other lots in the subdivision are located adjacent to and border on a pond.

5. On September 23, 2022, Appellee Juren submitted a Miscellaneous Activities In Wetlands permit application (hereinafter “MAIW Application”) for nuisance vegetation control and swim and open water access activities at the Property. (JPFS, page 8, Appellee EPC Exhibit 4, Tr. p 72, line 15)

6. In reviewing the MAIW Application EPC expert Chantelle Lee reviewed the history of the project site and history of the folio parcel number along with a review of aerial imagery of the property (Tr. p 73).

7. The MAIW application review confirmed jurisdictional wetlands are onsite (Tr. p 74, lines 2-9).

8. EPC expert Chantelle Lee observed in August of 2022 that nuisance and/or exotic vegetation exists on the shoreline of the Property owned by Appellee Juren. (JPHS, page 8, Joint Exhibit 2, Tr. p 77, lines 1-5)

9. The MAIW Application proposed two types of wetland impacts that involve “clearing” of wetlands: 1) 25-ft wide Swim and Open Water Access; and 2) Nuisance Vegetation Control: removal and maintenance of wetland vegetation. (JPHS, page 8, Joint Exhibit 2)

10. The MAIW Application was reviewed by EPC staff and the MAIW Permit for the above described activities was issued on December 1, 2022. (JPHS, page 8, Joint Exhibit 2)

11. Condition #1 of the MAIW Permit states “[i]n areas outside of the 25-foot wide swim and open water access corridor, only those plant species listed in the table above are authorized for removal.” The “table above” lists the following: “Vines, Torpedo grass, Peruvian primrose willow, Dogfennel, and Cuban bulrush.” (JPHS, page 8, Joint Exhibit 2)

12. Vines, Torpedo grass, Peruvian primrose willow, Dogfennel, and Cuban bulrush are listed as nuisance vegetation and qualify for removal from wetlands under Section 1-11.10(1)(b), Rules of the EPC. (Tr. p 76, lines 21-25, p77, lines 1-5)

13. The MAIW Permit allows the method of vegetation control to be hand removal, hand tools and/or herbicides. (Joint Exhibit 2)

14. The Appellant’s arguments are limited to the proposed use of herbicide treatments and not related to hand removal or hand tools for the control of vegetation. (JPHS, page 9)

15. The MAIW Permit requires re-planting in the nuisance vegetation control area to ensure erosion control and to ensure that native vegetation revegetates in the area. (Joint Exhibit 2, Tr. p 77, Lines 9-14)

16. To ensure there are no offsite impacts, Condition #18 of the MAIW Permit states “The work performed under this authorization shall not be conducted on any property, other than that owned by the Applicant, without the prior written approval of that property owner. (JPHS, page 8, Joint Exhibit 2, Tr. p 49, Lines 6-15, Tr. p 84, lines 1-22)

17. The location of the Swim and Open Water Access area on the Property is not disputed. (JPHS, page 8)

18. Although Appellant’s expert Chayet testified that prior unpermitted spraying in the pond may have resulted in bio accumulation in the pond, no evidence, such as analysis of soil samples, was provided to substantiate this position.

19. At the hearing, Mr. Anderson testified that a pair of sandhill cranes with colts were observed utilizing the pond.

20. The conditions in the MAIW Permit, specifically1, 4-19, and 21, ensure that the impacts are minimized to the greatest extent practicable under Section 1-11.09(1)(c), Rules of the EPC. (Tr. p 37-38, 77-78)

21. For the Swim and Open Water Access portion of the MAIW Permit, that 25-foot size is dictated by rule, however, EPC staff ensured that the area would be located in the appropriate and best location on the Property. (Tr. p 78, lines 8-22)

22. The conditions in the MAIW Permit ensure that the impacts are conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts under Section 1-11.09(1)(c), Rules of the EPC. (Tr. p 78-79)

23. Specifically, MAIW Permit condition 14 provides that:

“[a]ll herbicide proposed for use must be approved for use in aquatic systems by the Environmental Protection Agency (EPA), and must be applied in accordance with the label directions. If herbicides are proposed for use in removing nuisance species, care

must be taken so that only the target nuisance species are treated. If native non-nuisance species are removed or destroyed by this treatment, replanting of these species will be required in addition to the replanting required in this permit. Any re-planting of unauthorized native non-nuisance species that were removed must be completed within 30 days of the unauthorized destruction/removal or within 30 days of written request of the EPC. Other conditions may be requested to ensure re-planting success.” (Joint Exhibit 2)

24. In addition, Condition 15 provides that “[t]he Applicant shall make a reasonable effort to notify potential users of the treated waters listing the types of herbicides and length of any use restrictions imposed by the label. Prior notification shall be accomplished by notices distributed to residents or signs posted access point(s) near the authorized area.” (Joint Exhibit 2, Tr. p 45, lines 24-25, p 76, lines 1-13)

25. Permit conditions, including but not limited to Numbers 14 and 15, provide reasonable assurance that any impacts from the use of herbicide treatment are minimized to the greatest extent practicable. (Joint Exhibit 2, Tr. p 77-78, 83)

26. EPC expert Chantelle Lee conducted a cumulative impact study under Section 1-11.09(2), Rules of the EPC, for the Nuisance Vegetation Control, however, an in depth cumulative impact consideration is not required when considering the cumulative impacts of proposed development, ie., nuisance vegetation removal, in combination with other nuisance vegetation removal which have been or may be proposed in the same drainage basin results is an overall benefit to the environment. This is because nuisance vegetation removal is encouraged and native plants are required to be re-planted resulting in a benefit to the wetland. The subject Nuisance Vegetation Control satisfies the cumulative impact analysis. (Tr. p 34-35, p 76, lines 1-11)

27. In addition, the specific size limitation of 25-feet for the Swim and Open Water Access addresses the cumulative impact consideration under Section 1-11.09(2), Rules of the

EPC as the rule specifically identifies a size allowance for *all* waterfront property owners. (Tr. p 76, lines 1-11)

28. Although not raised in the Amended Appeal, EPC staff ensured that the MAIW Permit satisfied all conditions in Section 1-11.10(3), Rules of the EPC. (Tr. p 79-81)

29. EPC staff rely on the U.S. Environmental Protection Agency (EPA) for determining what herbicides can be safely applied to aquatic systems. EPC staff also rely on the EPA's labelling instructions to ensure there are no offsite impacts and to ensure wetland impacts are minimized. (Tr. p 39, 48-49, 59, 84-85)

30. In the expert witness Chantelle Lee's opinion and to a reasonable degree of certainty, the MAIW Permit, along with the conditions contained therein, provide reasonable assurance that herbicide treatment is minimized and will be conducted in a manner that causes the least environmentally adverse impacts. (Tr. p 85-86)

31. In the expert witness Chantelle Lee's opinion and to a reasonable degree of certainty, the MAIW Permit along with the conditions contained therein, for the nuisance vegetation control and the swim and open water access activities provide reasonable assurance that the activity will comply with the Commission rules including Chapter 1-11 and the Basis of Review. (Tr. p 86)

CONCLUSIONS OF LAW

1. The Hearing Officer has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended (EPC Act), and Section 1-2.30, Rules of the EPC.

2. Appellee EPC is a local regulatory agency authorized to enforce the EPC Act and the Rules promulgated thereunder, including specifically the EPC Wetland Rule Chapter 1-11, in Hillsborough County, Florida.

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

4. Because an administrative proceeding “is intended to formulate final agency action and not to review action taken earlier and preliminarily, the hearing officer may consider changes or other circumstances external to the application.” Hamilton County v. Florida Department of Environmental Regulation, 587 So.2d 1378 (Fla. 1st DCA 1991); Florida Department of Transportation v. J.W.C. Co., Inc., 396 So.3d 778 (Fla. 1st DCA 1981) and McDonald v. Department of Banking and Finance, 346 So.2d 569, 584 (Fla. 1st DCA 1977). Similarly, an administrative proceeding pursuant to Part IV of the EPC Administrative Rule Chapter 1-2 is intended to formulate final agency action and is also conducted *de novo*. Thus, the Hearing Officer may consider evidence supporting the application and the MAIW Permit that was submitted at hearing, even if not included in the application, and may recommend changes or modifications to the proposed final agency action.

5. Pursuant to Section 9 of the EPC Act, any person aggrieved by an action of the Executive Director has the right to appeal that decision to the Commission, which consists of the duly elected members of the Hillsborough County Board of County Commissioners. In addition, Section 1-2.30, Rules of the EPC, states that any person who has received a written decision of the Executive Director *pursuant to* the EPC Act (meaning that the person is specifically entitled to notice pursuant to the EPC Act) and any person whose interests protected by the EPC Act are

adversely affected by an action or decision of the Executive Director, may obtain administrative review of the basis for the action or decision by appealing to the Commission.

6. The EPC's Wetland Rule 1-11.05 requires written authorization from the Executive Director to impact jurisdictional wetlands in Hillsborough County.

7. Development in wetlands is defined as "any manmade change to real property, including but not limited to dredging, filling, grading, paving, excavating, *clearing*, timbering, ditching or draining." (emphasis added) Section 1-11.01(2)(b), Rules of the EPC.

8. As identified in Section 1-11.02(2)(b), the Nuisance Vegetation Control and the Swim and Open Water Access constitute "clearing" in wetlands and thus are defined as "proposed development" under Section 1-11.09(2), Rules of the EPC.

9. Section 1-11.06(1), Rules of the EPC states "[u]pon request to the Executive Director or authorized agent to review a proposed development within wetlands or other surface water, an applicant must demonstrate reasonable assurance that the activity will comply with the adopted rules of the [EPC]."

10. Section 1-11.06(2), Rules of the EPC states "[t]he Executive Director will review any application for wetland and other surface water impacts based on the standards in this rule and those provided in the currently adopted Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands [Basis of Review]."

11. Pursuant to Section 1-11.07, Rules of the EPC, wetland impacts will be authorized when the impact is necessary for reasonable use of the property *and* only if the environmental benefits provided by the affected wetland are adequately protected by specified conditions and time limitations which would be imposed upon approval of the development.

12. Section 1-11.09(1)(c), Rules of the EPC provides the following:

[o]nly development under the following circumstances shall be determined to provide adequate protection of the environmental benefits: and . . . (c) Where the adverse impact is of nominal consequence to the wetland or other surface water, as defined by Section 62-340.600, F.A.C., the impact will be reviewed as a “Miscellaneous Activities in Wetlands” under Section 1-11.10. Wetland or other surface water impacts under this authorization shall be minimized to the greatest extent practicable, unless defined herein by size, and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts.

13. Section 1-11.09(2), Rules of the EPC requires that a consideration “shall be made of cumulative impacts of proposed development to the wetland system in combination with other developments which have been or may be proposed in the same drainage basin.”

14. Section 1-11.10, Rules of the EPC addresses those wetland impacts that are of “nominal consequence to wetlands” and qualify for a “Miscellaneous Activities in Wetlands Authorization” and identifies other conditions for approval.

15. Section 1-11.10(1)(b), Rules of the EPC identifies nuisance and exotic vegetation removal in wetlands (Nuisance Vegetation Control) as a nominal consequence and thus qualifies under a MAIW permit. The rule further states “[p]hased 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.”

16. Section 1-11.10(1)(c), Rules of the EPC also identifies “herbaceous vegetation removal for minor swim access areas not to exceed 25 feet of shoreline” (Swim and Open Water Access) as a nominal consequence and thus qualifies for a MAIW permit.

17. Section 1-11.10(2), Rules of the EPC states “[d]evelopment activities in wetlands that qualify under this section [Nuisance Vegetation Control and Swim and Open Water Access] do not need to satisfy the reasonable use requirement in section 1-11.07 or mitigation under section 1-11.08.”

18. Section 1-11.10(3), Rules of the EPC provides three general conditions for these MAIW permits but no dispute was raised on these three issues in the Amended Appeal.

19. Sections 5.2.1 and 5.2.2 of the Basis of Review further address both Nuisance Vegetation Control and Swim and Open Water Access that were approved in the MAIW Permit.

20. Section 5.2.1 of the Basis of Review titled “Nuisance Vegetation Control” states:

The EPC encourages property owners to remove or control nuisance and exotic plant species from wetlands and other surface waters on their property. An application listing the proposed activities must be submitted for review and approval by the EPC staff. The application must list the plant species proposed for removal or control and the method to be used. Re-planting with native species shall be required where necessary to ensure adequate erosion control and to encourage native re-vegetation.

21. Section 5.2.2, Basis of Review titled “Swim and Open Water Access” provides that a “maximum 25-foot wide vegetation clearing zone may be maintained from the shoreline to open water for swim access, open water access, and construction/location of facilities. Native tree species removal is prohibited under this section.”

22. There is no specific law or rule that requires an applicant to utilize a specific *method* of Vegetation Control treatment for the creation or maintenance of a Swim and Open Water Access area under Basis of Review Section 5.2.2.

23. There is no specific law or rule that requires an applicant to utilize a specific *method* of Nuisance Vegetation Control treatment for the control of nuisance vegetation under Basis of Review Section 5.2.1.

24. EPC rules do not establish a hierarchy, preference, or requirement to utilize one method of vegetation control over another method, but they do require specific conditions and limitations to address reasonable assurance that the activities that qualify under a Section 1-

11.10, no matter which method is sought by the applicant, satisfies all other applicable EPC rules.

25. The minimization of wetland impacts, as required by Section 1-11-09(c), is achieved through both the qualifying criteria for a MAIW permit and the addition of specific conditions. In the instance of herbicide treatment under the MAIW Permit, the specific conditions are found in Conditions 14 and 15 and generally include the requirements to: (1) use herbicides approved by the EPA for aquatic systems; (2) be used in accordance with labelling instructions; and (3) to make a reasonable effort to notify potential users of the treated waters and identify the types of herbicides and length of any use restrictions imposed by the label.

26. The observation of a pair of sandhill cranes with colts utilizing the pond does not on its face demonstrate that the pond provides a “significance habitat” for state listed threatened or endangered species. The adjective “significant” is defined in Oxford Learner’s dictionary as “large or important” or “to have an effect or to be noticed”. A definition of “significant habitat” from www.lawinsider.com’s dictionary provides a concise definition. That definition states as follows:

“Significant habitat means areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species diversity; important wildlife nesting or breeding areas; wildlife seasonal ranges or refuge areas along migratory routes; important movement corridors for wildlife; and limited availability or high vulnerability. These areas typically contain some feature that is particularly attractive to wildlife which in most instances is water. To be considered a significant habitat, the area must be of sufficient size or functionally linked to another significant habitat or critical habitat to allow continued functioning of the area at the level described in this definition considering existing and proposed developments of noncritical areas in the vicinity.”

27. If a regulatory agency gives notice of intent to grant a permit application, the applicant has the initial burden at a formal administrative hearing of going forward with the

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

28. The applicant's burden is "one of reasonable assurances, not absolute guarantees." Manasota-88, Inc., v. Agrico Chemical, 12 F.A.L.R. 1319, 1325 (DER 1990). The reasonable assurances must deal with reasonably foreseeable contingencies. A permit applicant is not required by Florida law to provide an "absolute guarantee" that a proposed project will not have any adverse impacts. Ginnie Spring, Inc. et al. v. Craig Watson, et al., 1999 Fla. Div. Adm. Hear. LEXIS 5830 (DEP 1999); Save our Suwannee, Inc. v. Robert Piechocki and Dept. of Env. Protection, 18 F.A.L.R. 1467, 1472 (Fla. DEP 1996); Powell v. U.S. Navy and Dept. of Env. Protection, 15 F.A.L.R. 3386, 3394 (Fla. DEP 1993). The necessary reasonable assurance in a particular case that a proposed project will comply with applicable rules is a mixed question of fact and law that must be made, in the final analysis, by the EPC. See, e.g., Sierra Club, et al v. Department of Env. Protection, et al, 18 F.A.L.R. 2257, 2260 (Fla. DEP 1996); Save Our Suwannee, Inc. vs. Piechocki and Dept. of Env. Protection, 18 F.A.L.R. 1467, 1471 (Fla. DEP 1996); VQH Development, Inc. v. Dept. of Environmental Protection, et al, 15 F.A.L.R. 3407, 3438 (Fla. DEP 1993); Barringer, et al v. E. Speer and Associates, Inc., and Department of Environmental Regulation, 14 F.A.L.R. 3660, 3667 n. 8 (Fla. DER 1992).

29. The Appellee Juren and Appellee EPC presented reasonable assurances that the Wetland Impact Approval complied with Chapter 1-11, Rules of the EPC, in that they presented

competent, substantial evidence, through expert witness testimony, that the Nuisance Vegetation Control and the Swim and Open Water Access proposed impacts satisfy the applicable rules for authorization. Therefore, the burden shifted to the Appellant to present “contrary evidence of equivalent quality” that the MAIW Permit did not comply with EPC’s rules. Florida Dept. of Transp. v. J.W.C. Co., Inc., 396 So.2d at 789.

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

31. The Appellant failed to meet his burden of providing contrary evidence of equivalent quality to that presented by the Appellees. The preponderance of the evidence in this matter supports the conclusion that the MAIW Permit allowing herbicide treatment complies with Chapter 1-11, Rules of the EPC.

RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order upholding the December 1, 2022 MAIW Permit.

Respectfully submitted,

Dated: July 27, 2023



Patricia A Petruff, Esquire
EPC Hearing Officer
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T. Andrew Zodrow, Esq (Counsel for Appellee EPC) zodrowa@epchc.org

**BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY**

JAMES ANDERSON,

Appellant,

vs.

EPC Case No. 22-EPC-015

**JOEL JUREN and
ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY,**

Appellees.

EXCEPTIONS TO RECOMMENDED ORDER

Appellant, James Anderson, pursuant to Rule 1-2.35, Rules of the Environmental Protection Commission (“EPC”) submits the following exceptions to the Recommended Order submitted in the above styled case as follows.

BACKGROUND AND STANDARD OF REVIEW FOR RECOMMENDED ORDER

Appellant James Anderson challenged the issuance of Joel Juren’s “Miscellaneous Activities In Wetlands” Permit authorization (“Permit”) on the basis that the Permit did not comply with the requirements of Section 1.11, Rules of the EPC to minimize impacts to wetlands to the greatest extent practicable and cause the least environmentally adverse impacts. On July 27, 2023, Hearing Officer submitted “Recommended Order with Findings of Fact and Conclusions of Law” upholding the Permit.

Section 1-2.35(a) provides that a party may file exceptions to findings of fact and conclusions of law contained in the Hearing Officer’s recommended order to the Legal Department within ten (10) calendar days of entry of the recommended order. Exceptions are limited to

challenges of the Hearing Officer’s determination of facts with specific reference to evidence in the record, or to the Hearing Officer’s application of the existing laws and rules to the facts as found.

Section 1-2.35(e) provides that the Commission may reject, reverse or modify a finding of fact only if it finds that the fact is not supported by substantial competent evidence in the record.

Competent substantial evidence is defined by the Florida Supreme Court as:

Such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion... We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial' evidence should also be “competent.”

DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

Section 1-2.35(f) further provides:

The Commission shall affirm, reverse, or modify the Hearing Officer’s findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of the EPC Act or the rules enacted pursuant to said act.

EXCEPTIONS TO FINDINGS OF FACT

1. Exception to Finding of Fact Nos. 20, 25, 30, 31

20. The conditions in the MAIW Permit, specifically 14-19, and 21, ensure that the impacts are minimized to the greatest extent practicable under Section 1-11.09(1)(c), Rules of the EPC. (Tr. p 37-38, 77-78).

25. Permit conditions, including but not limited to Numbers 14 and 15, provide reasonable assurance that any impacts from the use of herbicide treatment are minimized to the greatest extent practicable. (Joint Exhibit 2, Tr. p 77-78, 83)

30. In the expert witness Chantelle Lee's opinion and to a reasonable degree of certainty, the MAIW Permit, along with the conditions contained therein, provide reasonable assurance that herbicide treatment is minimized and will be conducted in a manner that causes the least environmentally adverse impacts. (Tr. p 85-86)

31. In the expert witness Chantelle Lee's opinion and to a reasonable degree of certainty, the MAIW Permit along with the conditions contained therein, for the nuisance vegetation control and the swim and open water access activities provide reasonable assurance that the activity will comply with the Commission rule including Chapter 1-11 and the Basis of Review. (Tr. p 86).

The related Finding of Fact Nos. 20, 25, 30, and 31, listed above, should be rejected by the Commission because there is no competent substantial evidence in the record to support the findings that impacts from the Permit are minimized to the greatest extent practicable under Section 1-11.09(1)(c). EPC admits they did not consider any impacts of the permit outside the project area, including impacts to the adjacent forested wetland area, significant wildlife habitat designated by Hillsborough County, Bell Creek, or related stormwater structures draining into Alafia River. (Tr. 90:22-91:16). EPC did not review the permit in combination with other nuisance removal and open water access permits in the same drainage basin. (Tr. 102:8-19). On the other hand, Appellant expert Chayet observed more native plants than Lee did during Lee's August 2022 site visit (*Compare* Chayet Testimony, Tr. 155-164 to Appellee Composite Exhibit 4b at 10). Based on the native flora observed on the site, Chayet testified that she would not recommend the application of herbicide on the site because it would kill the native flora in addition to the species the applicant is trying to target. Herbicide application applied in one specific spot will not stay in that specific spot. Because the herbicide would be present throughout the pond, it will kill the native plants along the littoral shelf. (Tr. 165:1-12).

Competent, substantial evidence analysis demands an honest look at the evidence available. *Wiggins v. Fla. Dept. of Hwy. Safety and Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) (“Otherwise, we are asking judges to simply parrot the findings of the hearing officer, thus reducing the task of a constitutional judge to providing a predetermined stamp of approval.”)

2. Exception to Finding of Fact Nos. 22, 23, and 25

22. The conditions in the MAIW Permit ensure that the impacts are conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts under Section 1-11.09(l)(c), Rules of the EPC. (Tr. p 78-79)

23. Specifically, MAIW Permit condition 14 provides that:

[a]ll herbicide proposed for use must be approved for use in aquatic systems by the Environmental Protection Agency (EPA), and must be applied in accordance with the label directions. If herbicides are proposed for use in removing nuisance species, care must be taken so that only the target nuisance species are treated. If native non-nuisance species are removed or destroyed by this treatment, replanting of these species will be required in addition to the replanting required in this permit. Any replanting of unauthorize native non-nuisance species that were removed must be completed within 30 days of the unauthorized destruction/removal or within 30 days of written request of the EPC. Other conditions may be requested to ensure re-planting success." (Joint Exhibit 2)

25. Permit conditions, including but not limited to Numbers 14 and 15, provide reasonable assurance that any impacts from the use of herbicide treatment are minimized to the greatest extent practicable. (Joint Exhibit 2, Tr. p 77-78, 83)

The Commission should reject the above findings of fact because the statement that the Permit causes the least environmentally adverse impacts is not supported by competent substantial evidence in the record. The record directly contradicts these findings of fact based on EPC’s own admissions. EPC witness Dessa Clock testified that hand removal would have the least environmentally adverse impact as a treatment method. (Tr. 43:13-44:9). EPC cannot ignore the

plain language requirement for “least environmentally adverse impacts” just because it is inconvenient or creates difficult precedent. (*See* EPC Counsel’s Opening Statement, Tr. 17:15-18). Additionally, Appellant expert Chayet testified that the least environmentally adverse impact to remove the invasive plants would be by manual removal, and mechanical would also be acceptable with a weedeater. (Tr. 165:13-21). Based on the native flora observed on the site, Chayet testified that she would not recommend the application of herbicide on the site because it would kill the native flora in addition to the species the applicant is trying to target. Herbicide application applied in one specific spot will not stay in that specific spot. Because the herbicide would be present throughout the pond, it will kill the native plants along the littoral shelf. (Tr. 165:1-12). Chayet testified that water discharges from the pond to wetland conservation areas, and there is no mechanism to apply herbicide to a small section of a pond and preventing it from moving through other areas. (Tr. 178:10-17).

3. Exception to Finding of Fact. No. 26

26. EPC expert Chantelle Lee conducted a cumulative impact study under Section 1-11.09(2), Rules of the EPC, for the Nuisance Vegetation Control, however, an in depth cumulative impact consideration is not required when considering the cumulative impacts of proposed development, ie., nuisance vegetation removal, in combination with other nuisance vegetation removal which have been or may be proposed in the same drainage basin results is an overall benefit to the environment. This is because nuisance vegetation removal is encouraged and native plants are required to be re-planted resulting in a benefit to the wetland. The subject Nuisance Vegetation Control satisfies the cumulative impact analysis. (Tr. p 34-35, p 76, lines 1-11)

Finding of Fact No. 26 is not supported by competent substantial evidence in the record and should be rejected by the Commission. Section 1.11.09(2) states:

Consideration shall be made of cumulative impacts of proposed development to the wetland system in combination with other

developments which have been or may be proposed in the same drainage basin.

Section 1.11.02(b) defines Development as:

any manmade change to real property, including but not limited to dredging, filling, grading, paving, excavating, clearing, timbering, ditching or draining.

Here, the MAIW Permit is for “clearing” of nuisance vegetation, so it falls under the definition of development. However, EPC admitted that they did not conduct a cumulative impacts analysis. (Tr. 76:4-8). Likewise, EPC admitted that they did not review the MAIW Permit nuisance removal in combination with other nuisance removal and swim and open water access which have been or may be proposed in the same drainage basin. (Tr. 102:8-19). Based on the plain language of the EPC Rules and the record, Finding of Fact No. 26 is unsupported by competent substantial evidence. Likewise, Chayet provided competent substantial evidence that the Permit will impact the wetland systems based on the linkages through stormwater structures and sensitive environmental areas directly connected to the pond, meaning a cumulative impact analysis would have a bearing on whether the permit caused environmental harm.

4. Exception to Finding of Fact Nos. 6 and 18

6. In reviewing the MAIW Application EPC expert Chantelle Lee reviewed the history of the project site and history of the folio parcel number along with a review of the aerial imagery of the property. (Tr. p 73)

18. Although Appellant’s expert Chayet testified that prior unpermitted spraying in the pond may have resulted in bio accumulation in the pond, no evidence, such as analysis of soil samples, was provided to substantiate this position.

Finding of Fact Nos. 6 and 18 should be modified to clarify the relevance and importance of the history of unpermitted spraying on site, and EPC’s failure to conduct an adequate historic review of the property, as supported by testimony of EPC scientist Lee, Appellee Juren, and

Appellant expert Chayet. During Lee's site visit, Lee spoke with a neighbor, Mr. Greco, who mentioned that herbicides had been used when the unauthorized removals occurred. (Tr. 94:15-18). Lee did not further review or research the details relating to the quantity of the herbicides used or environmental conditions on the site as part of her MAIW Permit review. (Tr: 94-95). Mr. Juren admitted that he contracted with Solitude Lake Management to perform nuisance vegetation services on his Property from April 2020 through March 31, 2021. (Tr. 118-120); Appellant Exhibit #2; Exhibit #4. The Safety Data sheet attached to the Solitude Lake Management Contract listed Diquat 2 as a herbicide, stating, "Environmental Precautions, Prevent material from entering public sewer systems or any waterways. Do not flush to drain." (Tr. 121:2-9). Mr. Juren admitted that he had an aquatic maintenance service treat the pond on the Property with herbicides for multiple years. (Tr. 229:2-8). EPC representative Lee admitted that she did not consider impacts or further investigate the potential of bioaccumulation of herbicides in the pond from the previous unpermitted applications during the MAIW Permit review process. (Tr. 95:1-7). According to Chayet, Diquat 2 accumulates in the soil, binds up with soil particles, and stays present in the system. (Tr. 178).

5. Exception to Finding of Fact. No. 19.

19. At the hearing, Mr. Anderson testified that a pair of sandhill cranes with colts were observed utilizing the pond.

Finding of Fact No. 19 should be modified to include that expert witness Debbie Chayet also testified and provided photographic evidence of Roosting Florida Sandhill Cranes and colts observed on the site. (Tr. 149:11 21); Appellant Exhibits 21 and 22. Section 1-11.10(3)(a), Rules of the EPC, provides that "these activities do not apply to wetlands or other surface waters that serve as significant habitat, such as roosting, nesting or denning areas, for state listed threatened or endangered species."

EXCEPTIONS TO CONCLUSIONS OF LAW

It is well-settled that a hearing officer's legal conclusions, as opposed to factual determinations, are not clothed with a presumption of correctness and thus, an agency is free to substitute its own conclusions of law for those of the hearing officer *Fortune Ins. Co. v. Dept. of Ins.*, 664 So. 2d 312, 314 (Fla. 1st DCA 1995). The following conclusions of law are unlawful and should be rejected by the Commission:

1. Exception to Conclusions of Law No. 22, 23, and 24

22. There is no specific law or rule that requires an applicant to utilize a specific method of Vegetation Control treatment for the creation or maintenance of a Swim and Open Water Access area under Basis of Review Section 5.2.2.

23. There is no specific law or rule that requires an applicant to utilize a specific method of Nuisance Vegetation Control treatment for the control of nuisance vegetation under Basis of Review Section 5.2.1.

24. EPC rules do not establish a hierarchy, preference, or requirement to utilize one method of vegetation control over another method, but they do require specific conditions and limitations to address reasonable assurance that the activities that qualify under a Section 1- 11.10, no matter which method is sought by the applicant, satisfies all other applicable EPC rules.

Here, Conclusions of Law Nos. 22, 23, and 24 be modified to further clarify that herbicide sprays are not allowed where they cause more than the least environmentally adverse impact possible. Nowhere in the EPC rules or Basis of Review does it state that herbicides are allowed to be applied for Vegetation Control under every and any circumstance where specific conditions are met. Section 5.2.1, BOR provides that "An application listing the proposed activities must be submitted for review and approval by the EPC staff." In practice, this means the analysis is a case-by-case analysis which, while appearing to be qualitative instead of qualitative, allows EPC staff to

make independent judgment calls based on the proposed activity. While there is not a formal hierarchy or preference, Section 5.1 of the Basis of Review provides:

Applicants do not need to demonstrate that the impact is necessary for reasonable use of a property, but the impacts must be minimized to the greatest extent practicable and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impact possible.

Likewise, Section 1-11.09(1)(c) provides (bolding added):

Where the adverse impact is of nominal consequence to the wetland or other surface water, as defined by Section 62-340.600, F.A.C., the impact will be reviewed as a Miscellaneous Activities in Wetlands” under Section 1-11.10. **Wetland or other surface water impacts under this authorization shall be minimized to the greatest extent practicable, unless defined herein by size, and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts**

A MAIW permit issued under Section 1-11.10 should be read *in pari materia* with Section 1-11.09, which requires the least environmentally adverse impact for MAIW permits. *Surf Works, L.L.C. v. City of Jacksonville Beach*, 230 So. 3d 925, 931 (Fla. 1st DCA 2017) (“The statutory construction rule of *in pari materia* requires provisions relating to the same subject to be construed together and compared with each other”). Whether hand removal, mechanical removal, or herbicides have the least environmentally adverse impact are clearly relevant under this analysis.

2. Exception to Conclusion of Law Nos. 25 and 29

25. The minimization of wetland impacts, as required by Section 1-11-09(c), is achieved through both the qualifying criteria for a MAIW permit and the addition of specific conditions. In the instance of herbicide treatment under the MAIW Permit, the specific conditions are found in Conditions 14 and 15 and generally include the requirements to: (1) use herbicides approved by the EPA for aquatic systems; (2) be used in accordance with labelling instructions; and (3) to make a reasonable effort to notify potential users of the treated waters and identify the types of herbicides and length of any use restrictions imposed by the label.

29. The Appellee Juren and Appellee EPC presented reasonable assurances that the Wetland Impact Approval complied with Chapter 1-11, Rules of the EPC, in that they presented competent, substantial evidence, through expert witness testimony, that the Nuisance Vegetation Control and the Swim and Open Water Access proposed impacts satisfy the applicable rules for authorization. Therefore, the burden shifted to the Appellant to present “contrary evidence of equivalent quality” that the MAIW Permit did not comply with EPC’s rules. *Florida Dept. of Transp. v. J.W.C. Co., Inc.*, 396 So.2d at 789.

EPC and Juren failed to provide reasonable assurances in the MAIW Permit that wetland or other surface water impacts are minimized to the greatest extent practicable. Applicant and EPC have not provided reasonable assurances that the MAIW Permit meets the required criteria under Section 1-11.09. The Pond is connected to wetland conservation areas, Bell Creek, and Alafia River through stormwater drainage structures. EPC admitted that they failed to evaluate, or even consider, whether impacts from the Permit will impact wetlands or other surface waters or minimize impacts to the greatest extent practicable. EPC failed to conduct any analysis of the impacts of such herbicide use on the pond or connected wetland system. EPC did not consider the impact to the wetlands or surface waters from additional herbicides on Property with preexisting bioaccumulation of herbicides applied Juren’s unpermitted contractors over several years. Even if the Applicant met the initial burden, Appellant presented competent substantial evidence through expert witness Chayet that that the Applicant is not entitled to the permit.

4. Exception to Conclusion of Law No. 31

31. The Appellant failed to meet his burden of providing contrary evidence of equivalent quality to that presented by the Appellees. The preponderance of the evidence in this matter supports the conclusion that the MAIW Permit allowing herbicide treatment complies with Chapter 1-11, Rules of the EPC.

As explained above, Appellee failed to meet their initial burden for reasonable assurances. On the other hand, Appellant has provided ample contrary evidence of higher quality than that presented by the Appellees to show that the herbicide treatment does not comply with the standards of Chapter 1-11. Based on the native flora observed on the site, Chayet testified that she would not recommend the application of herbicide on the site because it would kill the native flora in addition to the species the applicant is trying to target. Herbicide application applied in one specific spot will not stay in that specific spot. Because the herbicide would be present throughout the pond, it will kill the native plants along the littoral shelf. (Tr. 165:1-12). Allowing herbicide treatment does not cause the least environmentally adverse impacts, as required by Section 1-11.09(1)(c). Chayet testified that the least environmentally adverse impact to remove the invasive plants would be by manual removal, and mechanical would also be acceptable with a weedeater. (Tr. 165:13-21). Chayet testified that the history of unpermitted spraying in the pond is relevant to the Permit review because it implies there is more than likely bioaccumulation already present in the pond, and additional herbicide treatments would add to that bioaccumulation. (Tr. 179:9-16). Wetland or other surface water impacts have not been minimized to the greatest extent practicable in the MAIW Permit, as required by Section 1-11.09(1)(c) by allowing herbicide treatment. Chayet testified that water discharges from the pond to wetland conservation areas, and there is no mechanism to apply herbicide to a small section of a pond and preventing it from moving through other areas. (Tr. 178:10-17).

6. Exception to Conclusion of Law No. 26

26. The observation of a pair of sandhill cranes with colts utilizing the pond does not on its face demonstrate that the pond provides a “significance habitat” for state listed threatened or endangered species. The adjective “significant” is defined in Oxford Learner’s dictionary as “large or important” or “to have

an effect or to be noticed. A definition of “significant habitat” from www.lawinsider.com’s dictionary provides a concise definition. That definition states as follows:

“Significant habitat means areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species diversity; important wildlife nesting or breeding areas; wildlife seasonal ranges or refuge areas along migratory routes; important movement corridors for wildlife; and limited availability or high vulnerability. These areas typically contain some feature that is particularly attractive to wildlife which in most instances is water. To be considered a significant habitat, the area must be of sufficient size or functionally linked to another significant habitat or critical habitat to allow continued functioning of the area at the level described in this definition considering existing and proposed developments of noncritical areas in the vicinity.”

The Hearing Officer’s citation to the “Oxford Leaner’s Dictionary” as “large or important” is unnecessary and resulting legal conclusion is erroneous because EPC rules describe significant habitat. Section 1-11.10(3)(a) provides that,

These activities do not apply to wetlands or other surface waters that serve as significant habitat, such as roosting, nesting, or denning areas, for state listed threatened or endangered species.

Chayet clearly testified that she observed roosting Sandhill Cranes on site, therefore falling under the definition of significant habitat per Chapter 1-11, Rules of the EPC. (Tr. 149:11-21); Appellant Exhibits 21 and 22. When a statute is clear, courts will not look behind the statute’s plain language for legislative intent or resort to rules of statutory construction to ascertain intent. *Paul v. State*, 112 So. 3d 1188, 1195 (Fla. 2013) (quoting *State v. Burris*, 875 So.2d 408, 410 (Fla. 2004). Courts refer to dictionary definitions to ascertain the plain and ordinary meaning of a word where the legislature has not defined words used in a statute. *State v. Debaun*, 129 So. 3d 1089, 1091 (Fla. 3d DCA 2013).

Conclusion

Anderson respectfully requests that the Commission rejects and modifies the specific findings of fact and conclusions of law as detailed above, entering a final Order which adopts these revisions as provided herein.

Respectfully submitted,

/s/Jane Graham

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of August, 2023 a true and correct copy of the foregoing “Exceptions to Recommended Order” has been furnished by email to the Hillsborough EPC Legal Department at legalcerk@epchc.org, Andrew Zodrow, Attorney, Environmental Protection Commission, 3629 Queen Palm Drive, Tampa Fl 33619 at zodrowa@epchc.org and Joel Juren at mrbjuren@gmail.com.

/s/Jane Graham

Jane Graham

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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

JAMES ANDERSON,

Appellant,

vs.

EPC Case No. 22-EPC-015

**JOEL JUREN and
ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY,**

Appellees.

**JOEL JUREN AND ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY’S JOINT RESPONSE TO APPELLANT JAMES
ANDERSON’S EXCEPTIONS TO RECOMMENDED ORDER**

The Executive Director of the Environmental Protection Commission of Hillsborough County (Appellee Executive Director) and Joel Juren (Appellee Juren), pursuant to Rule 1-2.35(b), Rules of the EPC, hereby jointly respond to the exceptions served on August 7, 2023, by Appellant James Anderson (Appellant) and state as follows:

Upon due notice, on June 2, 2023, a final evidentiary hearing in the above-captioned matter was held in Tampa, Florida by Patricia A. Petruff, Esq., assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (Commission), on Appellant’s Amended Notice of Appeal of the Miscellaneous Activities In Wetlands (MAIW Application) executed by the EPC Executive Director (Executive Director) on December 1, 2022 authorizing the applicant Appellee Juren to impact wetlands in Hillsborough County, Florida. The proposed wetland impacts involve nuisance vegetation control with re-planting on the Appellee Juren’s shoreline and for the creation of a Swim and Open Water Access to a pond. The evidentiary

hearing included the presentation of five (5) witnesses and the admittance of over 34 exhibits and sub-exhibits. Appellee Juren has stated during a telephone call he is in agreement with the EPC Executive Director's position and that he would like to join in this response.

On July 27, 2023, the Hearing Officer entered a Recommended Order with 31 Findings of Fact and 31 Conclusions of Law. In the Recommended Order, the Hearing Officer concluded that the preponderance of the evidence presented in this appeal supports the conclusion that Miscellaneous Activities In Wetlands Authorization #75762 (MAIW Permit) complies with the applicable standards under Chapter 1-11, Rules of the EPC (Wetlands Rule) and the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands (“Basis of Review” or “BOR”) referenced within Section 1-11.06(2), Rules of the EPC. On August 7, 2023, the Appellant filed “Exceptions to the Recommended Order” (Appellant’s Exceptions). Appellant’s Exceptions were filed with the Commission, pursuant to Section 1-2.35, Rules of the EPC, in anticipation of a public hearing on the entry of a Final Order.

STANDARDS OF REVIEW FOR RECOMMENDED ORDERS

The appropriate scope of review of a Hearing Officer's recommended findings of fact and conclusions of law is well established. In the Final Order in the case Ogden, et al. v. Truex, et al., (EPC Final Order, June 22, 2015) the Commission held the following:

7. Pursuant to sections 1-2.35(e) and (f), Rules of the EPC:

(e) The Commission may reject, reverse or modify a finding of fact only if it finds that the fact is not supported by substantial competent evidence in the record.

(f) The Commission shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of the EPC Act or the rules enacted pursuant to

said act.

The EPC local regulatory programs are not subject to Chapter 120, Florida Statutes (Administrative Procedures Act), but for purposes of EPC administrative hearings Chapter 120 jurisprudence is persuasive at a minimum.

8. The agency reviewing the Recommended Order may not reject or modify the findings of fact of a hearing officer unless they are not supported by substantial competent evidence in the record. Section 1-2.35, Rules of the EPC and Charlotte County v. IMC Phosphates Co., 18 So. 3d 1089 (Fla. 2d DCA 2009). The term “competent substantial evidence” does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, “competent substantial evidence” refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm’n*, 671 So.2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers v. Dep’t of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); Belleau v. Dep’t of Env’tl. Prot., 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); Dunham v. Highlands County Sch. Bd., 652 So.2d 894 (Fla. 2d. DCA 1995). These evidentiary-related matters are within the province of the hearing officer, as the “fact-finder” in these administrative proceedings. *See e.g., Tedder v. Fla. Parole Comm’n*, 842 So.2d 1022, 1025 (Fla. 1st DCA 2003); Heifetz v. Dep’t of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Also, the hearing officer’s decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See e.g., Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.*, 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); Collier Med. Ctr. v. State, Dep’t of HRS, 462 So.2d 83, 85 (Fla. 1st DCA 1985); Fla. Chapter of Sierra Club v. Orlando Utils. Comm’n, 436 So.2d 383, 389 (Fla. 5th DCA 1983).

A reviewing agency thus has no authority to evaluate the quantity and quality of the evidence presented at an administrative hearing, beyond making a determination that the evidence is competent and substantial. *See, e.g., Brogan v. Carter*, 671 So.2d 822, 823 (Fla. 1st DCA 1996).

9. 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). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless clearly erroneous. Falk v. Beard, 614 So. 2d 1086 (Fla. 1993); Department of Environmental Regulation v. Goldring, 477 So.2d 532 (Fla. 1985). 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).

In addition, “competent substantial evidence” is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. O.H. v. Agency for Persons with Disabilities, 332 So. 3d 27 (Fla. 3d DCA 2021). Further, it does not matter that the record contains competent substantial evidence to support alternative findings of fact, but only whether the findings of fact in the Recommended Order are supported by competent and substantial evidence. *See* Swanigan v. Dobbs House, 442 So. 2d 1026, 1027 (Fla. 1st DCA 1983); School District of Collier County. v. Fuqua, 136 So. 3d 687, 691 (Fla. 2d DCA 2014). Expert testimony introduced during the evidentiary hearing constitutes competent substantial evidence and may not be overturned in a Final Order. Martuccio v. Department of Professional Regulation, Bd. of Optometry, 622 So.2d 607 (Fla. 1st DCA 1993).

**EXCEPTIONS DIRECTED TO FINDINGS OF FACT
PARAGRAPHS 20, 25, 30, AND 31**

The Appellant filed exceptions challenging the Findings of Fact in paragraphs 20, 25, 30 and 31 of the Recommended Order. These exceptions are directed to the minimization requirement under Section 1-11.09(1)(c), Rules of the EPC which states that:

“[w]here the adverse impact is of nominal consequence to the wetland or other surface water, as defined by Section 62-340.600, F.A.C., the impact will be reviewed as a “Miscellaneous Activities in Wetlands” under Section 1-11.10. *Wetland or other surface water impacts* under this authorization *shall be minimized to the greatest extent practicable*, unless defined herein by size, and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts.” (emphasis added)

It is important to note that EPC expert witnesses Dessa Clock and Chantelle Lee were accepted as expert witnesses in the application of the EPC’s wetland regulations, specifically Chapter 1-11 and the Basis of Review for purposes of miscellaneous activities in wetlands permitting. These rules, Chapter 1-11 and the Basis of Review, are the governing rules for purposes of the MAIW Permit. Their acceptance as expert witnesses is identified in the record in the June 2, 2023 evidentiary hearing transcript (Transcript) page numbers 31, lines 20-25, page 33, lines 13-14 (Dessa Clock) and in page 67, lines 7-12, page 69, lines 25-26, page 70, lines 1-7 (Chantelle Lee).

Both EPC witnesses provided expert testimony during the evidentiary hearing that permit conditions were included in the MAIW Permit that ensured the wetland impacts were minimized to the greatest extent practicable. This testimony, as identified in the Recommended Order’s citations to the Transcript, can be found in the Transcript pages 37-38, 77-78, 83, 85-86. It is long standing Florida law that the hearing officer is the fact finder in administrative proceedings. It is for the hearing officer to consider all evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from evidence, and reach ultimate findings of fact based on competent substantial evidence. Expert testimony introduced during the evidentiary hearing constitutes competent substantial evidence and may not be overturned in a Final Order. Ogden, et al. v. Truex, et al., (EPC Final Order, June 22, 2015); *Also see*, Peace River/Manasota

Regional Water Supply Authority v. IMC Phosphates Co., 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); Collier Med. Ctr. v. State, Dep't of HRS, 462 So.2d 83, 85 (Fla. 1st DCA 1985); Martuccio v. Department of Professional Regulation, Bd. of Optometry, 622 So.2d 607 (Fla. 1st DCA 1993). Thus, the EPC Executive Director requests the Commission affirm the Findings of Fact paragraphs 20, 25, 30, 31 as they are based upon competent substantial evidence provided by testimony from a witness accepted as an expert in the application of Chapter 1-11, Rules of the EPC and the Basis of Review.

**EXCEPTIONS DIRECTED TO FINDINGS OF FACT
PARAGRAPHS 22, 23 AND 25**

The Appellant filed exceptions challenging the Findings of Fact paragraphs 22, 23 and 25 of the Recommended Order. These exceptions are directed to the least environmentally adverse requirement under Section 1-11.09(1)(c), Rules of the EPC which states that:

“[w]here the adverse impact is of nominal consequence to the wetland or other surface water, as defined by Section 62-340.600, F.A.C., the impact will be reviewed as a “Miscellaneous Activities in Wetlands” under Section 1-11.10. *Wetland or other surface water impacts* under this authorization shall be minimized to the greatest extent practicable, unless defined herein by size, and *shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts.*” (emphasis added)

Again, it is important to note that EPC expert witnesses Dessa Clock and Chantelle Lee were accepted as experts in the application of the EPC’s wetland regulations, specifically Chapter 1-11 and the Basis of Review for purposes of miscellaneous activities in wetlands permitting. Their acceptance as expert witnesses is identified in the record in Transcript page numbers 31, lines 20-25, page 33, lines 13-14 (Dessa Clock) and in page 67, lines 7-12, page 69, lines 25-26, page 70, lines 1-7 (Chantelle Lee).

Again, both EPC witnesses provided expert testimony during the evidentiary hearing that permit conditions were included in the MAIW Permit that ensured the wetland impacts were conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts. This testimony, partially identified in the Recommended Order's citations to the Transcript, can be found in the Transcript pages 77-78, 83, 85 and 86. Specifically, the expert witness Chantelle Lee was asked under oath on Transcript page 85 "[i]n your expert opinion and to a reasonable degree of certainty, does the permit, Joint Exhibit 2, along with the conditions in the permit provide reasonable assurance that herbicide treatment is minimized and will be conducted in a manner that causes the least environmentally adverse impacts" to which the expert responded "yes."

Expert testimony constitutes competent evidence in the record and as such, pursuant to Section 1-2.35(e), Rules of the EPC, "[t]he Commission may reject, reverse, or modify a Hearing Officer's finding of fact *only* if it finds that the fact is not supported by substantial competent evidence in the record." (emphasis added) The Commission has no authority to overturn or modify the Hearing Officer's Finding of Fact paragraphs 22, 23 and 25 because they are based on substantial competent evidence in the record. The Appellant is asking the Commission to re-weigh the evidence in the record or to disregard the expert testimony evidence presented during the evidentiary hearing. It is not the purpose of the Commission to reject, reverse, or modify a Hearing Officer's Finding of Fact when it is based on expert witness testimony presented during the hearing. Expert testimony introduced during the evidentiary hearing constitutes competent substantial evidence and may not be overturned in a Final Order. Ogden, et al. v. Truex, et al., (EPC Final Order, June 22, 2015); *Also see*, Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co., 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); Collier Med. Ctr. v.

State, Dep't of HRS, 462 So.2d 83, 85 (Fla. 1st DCA 1985); Martuccio v. Department of Professional Regulation, Bd. of Optometry, 622 So.2d 607 (Fla. 1st DCA 1993). Therefore, the EPC Executive Director requests the Commission affirm the findings of fact in paragraphs 22, 23, and 25 as they are based upon competent substantial evidence provided by expert witness testimony in the application of Chapter 1-11, Rules of the EPC and the Basis of Review.

EXCEPTIONS DIRECTED TO FINDING OF FACT
PARAGRAPH 26

Finding of Fact paragraph 26 involves a specific finding that the subject nuisance vegetation control and Swim and Open Water Access impact satisfies the cumulative impact analysis. This Finding of Fact is supported by expert testimony provided by Dessa Clock and Chantelle Lee and is found at Transcript pages 34-35 (Dessa Clock) and pages 75-76 (Chantelle Lee). Expert testimony constitutes competent evidence in the record and as such, pursuant to Section 1-2.35(e), Rules of the EPC, “[t]he Commission may reject, reverse, or modify a Hearing Officer's finding of fact *only* if it finds that the fact is not supported by substantial competent evidence in the record.” (emphasis added) The Commission has no authority to overturn or modify the Hearing Officer’s Finding of Fact paragraph 26 because it is based on substantial competent evidence in the record. The Appellant is asking the Commission to re-weigh the evidence in the record or to disregard the expert testimony evidence presented during the evidentiary hearing. It is not the purpose of the Commission to reject, reverse, or modify the Hearing Officer’s Finding of Fact when it is based on expert witness testimony presented during the hearing.

Again, this Finding of Fact was made based on the expert witnesses Dessa Clock and

Chantelle Lee and must be upheld in this proceeding. Expert testimony introduced during the evidentiary hearing constitutes competent substantial evidence and may not be overturned in a Final Order. Ogden, et al. v. Truex, et al., (EPC Final Order, June 22, 2015); *Also see*, Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co., 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); Collier Med. Ctr. v. State, Dep't of HRS, 462 So.2d 83, 85 (Fla. 1st DCA 1985); Martuccio v. Department of Professional Regulation, Bd. of Optometry, 622 So.2d 607 (Fla. 1st DCA 1993).

**EXCEPTIONS DIRECTED TO FINDINGS OF FACT
PARAGRAPHS 6 AND 18**

As stated above, pursuant to Section 1-2.35(e), Rules of the EPC, “[t]he Commission may reject, reverse, or modify a Hearing Officer's finding of fact *only* if it finds that the fact is not supported by substantial competent evidence in the record.” (emphasis added) The Appellant filed exceptions arguing that Findings of Fact paragraph 6 and paragraph 18 “should be modified to clarify the relevance and importance of the history of unpermitted spraying on site . . .” The Appellant does not make the argument that the specific findings must be overturned but only modified by supplementing or clarifying additional information. The Finding of Fact paragraph 6 is supported by competent evidence in the record found at Transcript page 73. Finding of Fact paragraph 18 is a finding made by the Hearing Officer that there was no evidence in the record supporting any bio-accumulation of herbicides in the pond. The Commission has no authority to overturn or modify the Hearing Officer’s Finding of Fact paragraph 6 provided it is based on substantial competent evidence in the record. The Commission also does not have authority to overturn or modify the Finding of Fact paragraph 18 where the Hearing Officer identified a factual issue based on the lack of evidence in the record. Ogden, et al. v. Truex, et al., (EPC Final

Order, June 22, 2015); *Also see*, Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co., 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); Collier Med. Ctr. v. State, Dep't of HRS, 462 So.2d 83, 85 (Fla. 1st DCA 1985); Martuccio v. Department of Professional Regulation, Bd. of Optometry, 622 So.2d 607 (Fla. 1st DCA 1993) It may also be important to note that the removal of these Findings of Facts would not change any outcome in the proceeding.

**EXCEPTIONS DIRECTED TO FINDING OF FACT
PARAGRAPH 19**

Finding of Fact paragraph 19 is supported by fact witness testimony of James Anderson and is not disputed by the Appellant or Appellee EPC Executive Director. The Appellant seeks to supplement Finding of Fact paragraph 19 by adding additional information. It is important to note the Hearing Officer sustained an objection on the record at Transcript Pages 149-153 regarding the introduction of a new issue concerning Sandhill Cranes during the evidentiary hearing and after the parties submitted a Joint Pre-hearing Stipulation. On July 18, 2023 the Appellant filed a motion to reconsider the objection which was denied by the Hearing Officer in an Order entered on July 25, 2023.

On May 17, 2023, the parties in this case entered into a Joint Prehearing Stipulation (JPHS) that identified the disputed issues of fact and law that were to be addressed and litigated at the final evidentiary hearing on June 2, 2023. As noted above, an objection raised at the hearing indicated that the JPHS made no mention of or reference to any allegation concerning Sandhill Cranes located on the pond, which was a completely new issue raised by the Appellant. The Appellant's motion to reconsider the objection was filed two months after entry of the JPHS and one day before the Proposed Recommended Orders were due to be submitted by the parties after the

conclusion of the evidentiary hearing. The raising of new substantive issues so late in the administrative hearing process is prejudicial to the Appellees and only serves to further delay issuance of a permit that was initially issued on December 1, 2022, over seven months ago.

Florida law finds that a stipulation that limits the issues to be tried “amounts to a binding waiver and elimination of all issues not included.” Delgado v. Agency for Health Care Administration, 237 So. 2d 432 (Fla. 1st DCA 2018). “Pretrial stipulations prescribing the issues on which a case is to be tried are binding upon the parties and the court, and should be strictly enforced.” Lotspeich Co. v. Neogard Corp., 416 So. 2d 1163, 1165 (Fla. 3d DCA 1982) citing Gunn Plumbing, Inc. v. Dania Bank, 252 So. 2d 1 (Fla.1971) The Appellant raised a new issue long after entry of the pre-hearing stipulation and the Hearing Officer correctly rejected that argument based on the above law. Thus, EPC Executive Director requests the Commission affirm the finding of fact in paragraph 19 of the Recommended Order.

CONCLUSIONS OF LAW

The Appellant’s exception alleging the Hearing Officer erred in applying the law concerning the method of vegetation control should be rejected by the Commission. The Hearing Officer’s Conclusions of Law in paragraphs 22, 23 and 24 of the Recommended Order state the following:

22. There is no specific law or rule that requires an applicant to utilize a specific *method* of Vegetation Control treatment for the creation or maintenance of a Swim and Open Water Access area under Basis of Review Section 5.2.2.
23. There is no specific law or rule that requires an applicant to utilize a specific *method* of Nuisance Vegetation Control treatment for the control of nuisance vegetation under Basis of Review Section 5.2.1.

24. EPC rules do not establish a hierarchy, preference, or requirement to utilize one method of vegetation control over another method, but they do require specific conditions and limitations to address reasonable assurance that the activities that qualify under a Section 1-11.10, no matter which method is sought by the applicant, satisfies all other applicable EPC rules. [sic]

All of these conclusions of law are accurate statements as the EPC rules, ie., Chapter 1-11 and the adopted Basis of Review, do not explicitly state an applicant must use any particular *method* of vegetation control. 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). Here, the plain language of Chapter 1-11 and the Basis of Review does not specify a methodology but only require the disclosure of the method to be used to ensure adequate conditions are included for those methods of vegetation control. Transcript pages 27-28. The Appellant is urging the Commission to interpret rule language beyond its plain meaning.

Further, as a matter of public policy, the interpretation of the Rule any other way could effectively eliminate the future use of specific methods of vegetation control. For example, the interpretation raised in the Appellant’s Exceptions, if accepted, would set a precedent that if hand removal is deemed a less environmentally adverse impact than herbicide use, then that would be the only method allowed in the County under the specific Rule. That is not how the Commission intended the rule to operate or the Commission would have included in the rule a hierarchy or other requirement to use a specific method of treatment under different circumstances. The Commission accepting the Appellant’s argument about the method of vegetation control would

also likely lead to significant wetland impact challenges or could eliminate entire vegetation control methods.

The Appellant next takes exception to the Hearing Officer's Conclusions of Law #25, #29 and #31. These conclusions of law state the following:

25. The minimization of wetland impacts, as required by Section 1-11-09(c), is achieved through both the qualifying criteria for a MAIW permit and the addition of specific conditions. In the instance of herbicide treatment under the MAIW Permit, the specific conditions are found in Conditions 14 and 15 and generally include the requirements to: (1) use herbicides approved by the EPA for aquatic systems; (2) be used in accordance with labelling instructions; and (3) to make a reasonable effort to notify potential users of the treated waters and identify the types of herbicides and length of any use restrictions imposed by the label.
29. The Appellee Juren and Appellee EPC presented reasonable assurances that the Wetland Impact Approval complied with Chapter 1-11, Rules of the EPC, in that they presented competent, substantial evidence, through expert witness testimony, that the Nuisance Vegetation Control and the Swim and Open Water Access proposed impacts satisfy the applicable rules for authorization. Therefore, the burden shifted to the Appellant to present "contrary evidence of equivalent quality" that the MAIW Permit did not comply with EPC's rules. Florida Dept. of Transp. v. J.W.C. Co., Inc., 396 So.2d at 789.
31. The Appellant failed to meet his burden of providing contrary evidence of equivalent quality to that presented by the Appellees. The preponderance of the evidence in this matter supports the conclusion that the MAIW Permit allowing herbicide treatment complies with Chapter 1-11, Rules of the EPC.

Each of these Conclusions of Law is based upon the consideration of the facts in the record and the interpretation of the standard of review, which addresses the preponderance of evidence in the record and the burden on the parties. For example, the MAIW Permit included

specific conditions that address rule requirements for the minimization of wetland impacts and consideration of cumulative impacts. For the use of herbicides for vegetation control, that is the inclusion of conditions which require: 1) use of herbicides approved by the U.S. Environmental Protection Agency for aquatic systems; (2) herbicides be used in accordance with labelling instructions; and (3) to make a reasonable effort to notify potential users of the treated waters and identify the types of herbicides and length of any use restrictions imposed by the label. As the Hearing Officer correctly concluded, those conditions serve to address the rule requirements for herbicide use during nuisance vegetation control. The interpretations of the applicable law in Conclusions of Law #25, #29 and #31 are correct with regard to the Findings of Fact made by the Hearing Officer.

The Appellant finally takes exception to the Hearing Officer's Conclusion of Law #26 relating to the Sandhill Cranes. As stated previously, the issue of the Sandhill Cranes was disposed of by the Hearing Officer by sustaining the trial objection and in the subsequent issuance of an Order Denying the Motion for Reconsideration rendered on July 25, 2023. The Sandhill Crane issue is moot by means of the July 25, 2023 Order, however, the Appellee Executive Director has no objection to the inclusion of the Hearing Officer's interpretation of the Rule as applied in Conclusion of Law #26 in the Final Order as it appears to be an adequate interpretation of Subsection 1-11.10(3)(a), Rules of the EPC.

Respectfully submitted this 17th day of August 2023.

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

CERTIFICATE OF FILING AND SERVICE

I CERTIFY that a true electronic copy was filed with the Commission via the Legal Clerk at legalclerk@epchc.org and a copy was furnished via email to Jane Graham (counsel for Appellant) at jane@sunshinecitylaw.com and jane@jcgrahamlaw.com and to Joel Juren (Appellee) at mrbjuren@gmail.com and on this 17th day of August 2023.

T. Andrew Zodrow

T. Andrew Zodrow, Esq.

Bar No.: 080055

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

JAMES ANDERSON,

Appellant,

vs.

EPC Case No. 22-EPC-015

**JOEL JUREN and
ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY,**

Appellees.

_____ /

JOINT PREHEARING STIPULATION

Appellant James Anderson (Appellant) and Appellee Joel Juren (Appellee Juren) and Appellee Environmental Protection Commission of Hillsborough County (EPC), by and through their undersigned counsel or as *pro se*, jointly respond to the Order Scheduling Final Hearing and Order of Pre-Hearing Instructions entered by the assigned Hearing Officer Patricia Petruff on February 21, 2023, to enter into a joint prehearing stipulation, and state as follows:

PRELIMINARY STATEMENT

On September 23, 2022, the Appellee Juren submitted to the EPC Executive Director an Application for a Miscellaneous Activities In Wetlands (MAIW Application) for the purpose of nuisance vegetation control and the creation of a swim and open water access area located along the shoreline of the property located at 10510 Sedgebrook Drive, Riverview, Hillsborough County, Florida (Property). The EPC reviewed the application under Chapter 1-11, Rules of the EPC (Wetlands Rule) and the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands (“Basis of Review” or “BOR”) referenced within Section 1-11.06(2), Rules of the EPC. Pursuant to Section 1-11.10(1), Rules of the EPC, nuisance vegetation removal and herbaceous

ATTACHMENT 7

vegetation removal for minor swim access areas not exceeding 25 feet of shoreline qualify as activities that are deemed of nominal consequence to a wetland and are eligible to be permitted as a “Miscellaneous Activities In Wetlands Authorization.” On December 1, 2022, the EPC Executive Director issued a Miscellaneous Activities In Wetlands Authorization #75762 (MAIW Permit) pursuant to Sections 1-11.10(1)(b) and 1-11.10(1)(c), Rules of the EPC. A Notice of Appeal was submitted by the Appellant James Anderson on January 13, 2023.

STATEMENT OF CONTROVERSY

The issue to be determined in this appeal is whether the EPC correctly determined that the MAIW Permit and conditions therein for the proposed nuisance vegetation control and swim and open water access activities comply with the EPC rules, specifically, Chapter 1-11, Rules of the EPC and the Basis of Review and all other applicable laws.

SUMMARY OF POSITIONS

(Statements set forth herein are not agreed upon by the other party)

APPELLANT:

Appellant Anderson contends that Section 1-11.09(1)(c) requires that wetland or other surface water impacts approved under a MAIW permit “shall be minimized to the greatest extent practicable, unless defined herein by size, and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts.” MAIW Permit #75762 fails to do so. Behind the Property pond is a wetland area with water that flows to a “significant wildlife habitat” and on to Bell Creek and the Alafia River. The authorization allows the use of herbicide in a water body that is connected via stormwater structures to larger wetland areas and on to the Alafia River. EPC failed to conduct any analysis of the impacts of such herbicide use on the pond or connected wetland system. Appellant Anderson’s expert witness Debbie Chayet will testify that the MAIW Permit does not create the least environmentally adverse impact and that

these impacts from herbicide application will negatively affect a considerably larger area than the permit holder's property. Additionally, Section 1.11.09(2) states, "Consideration shall be made of cumulative impacts of proposed development to the wetland system in combination with other developments which have been or may be proposed in the same drainage basin." EPC has not considered downstream environmental impacts of herbicide treatment. The wetland conservation areas will be negatively impacted by herbicide treatment to the pond and littoral shelf. The EPC staff failed to consider any cumulative impacts of the proposed permit to the larger wetland system or within the Alafia drainage basin. Moreover, it is impossible to stop herbicides sprayed on Mr. Juren's property within the pond from flowing onto Mr. Anderson's part of the pond.

APPELLEES:

EPC and Appellee Juren contend that MAIW Permit and the application provide reasonable assurance the proposed nuisance vegetation control and swim and open water access activities meet all applicable rules. It is important to note that the Appellant did not state any material facts in dispute in the Notice of Appeal.

The MAIW Permit authorizes the control of nuisance vegetation along the shoreline of Appellee Juren's property pursuant to Section 1-11.10(1)(b), Rules of the EPC (Nuisance Vegetation Control) and authorizes a swim and open water access area for 25 feet along the shoreline pursuant to Section 1-11.10(1)(c), Rules of the EPC (Swim and Open Water Access Area). Nuisance Vegetation Control activities allow the removal of nuisance or exotic vegetation along shorelines by treatment with handheld equipment, mechanical equipment or chemical treatment (herbicides). The EPC rules do not dictate what method an applicant may utilize so long as the removal meets the criteria contained in Section 1-11.10(1)(b), Rules of the EPC, Section 5.2.2, Basis of Review, and any applicable permit conditions.

Swim and Open Water Access Area activities allow the removal of all vegetation up to 25 feet along the shoreline of the property for the purposes of swim and open water access among

other recreational and access activities. Although not applicable in this case, the swim and open water access area is also used as the location for facilities such as docks, boatlifts, and boat ramps, etc. Similarly, to Nuisance Vegetation Control, the EPC rules do not specify a method an applicant may utilize to remove the vegetation within the 25 foot area along the shoreline.

The Appellant's position now appears to be focused only on the use of herbicides and raises no issues pertaining to the existence or location of the nuisance vegetation and no specific concerns about the location of the Swim and Open Water Access Area. The main issue addressed by the Appellant relates to an alleged failure to identify a preferred or required *method* of treatment for the two areas. As stated above, the EPC's rules do not include any preference or hierarchy in the method of vegetation treatment. The exclusion in the Wetland Rule of a requirement for a specific treatment method was intentional as the greater policy implications of having EPC staff impose a specific treatment method for every single application in different areas of the County was not intended. The only specific requirements for herbicide treatment are to use an EPA approved herbicide and follow the labeling instructions.

The Appellant also raises the issue of cumulative impacts under Section 1-11.09(2), Rules of the EPC. The intent of the allowance of a 25 foot Swim and Open Water Access Area adjacent to ponds and lakes and the nuisance vegetation control under a MAIW permit are both specifically identified as a *nominal consequence to a wetland* pursuant to Section 1-11.10, Rules of the EPC. The use of the cumulative impacts analysis is not appropriate for determining the method of vegetation treatment. The MAIW Permit by specific condition only allows wetland impacts within the approved treatment area and any impacts offsite would be addressed through future compliance and enforcement. A finding that herbicides have the *mere possibility* to travel offsite and impact other areas, thus prohibiting their use under a permit, would effectively eliminate their use in Hillsborough County as that statement could be made in every application.

In addition to arguing Section 1-11.09(1)(c) was not complied with, the Appellant appears to argue various other facts related to such issues as prior compliance matters, use of herbicide by contractors, lack of notice to adjacent and surrounding property owners, and effects of herbicide

treatment on the environment requiring reversal or modification of the MAIW Permit. These alleged considerations raised by the Appellant are not included within the criteria for issuance or denial of a permit for this specific activity.

EXHIBITS

JOINT EXHIBITS OF THE PARTIES:

1. Judicial Notice Documents (for Reference):

a. Special Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495.

b. EPC Administrative Procedures Rule Chapter 1-2, current version August 9, 2012. Note, coincidentally amendments are proposed for adoption on May 18, 2023, the day after entry of this stipulation but the parties agree to use the current version.

c. EPC Wetlands Rule Chapter 1-11, current version July 17, 2008.

d. EPC Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands, current version May 20, 2022.

e. EPC Final Order Medero v. EPC, January 28, 2013

f. EPC Final Order Ogden v. Truex and EPC, June 22, 2015

g. EPC Final Order Vance v. Vath and EPC, August 8, 2015

h. EPC Final Order Criollo v. Johnsen and EPC, April 19, 2021

2. Miscellaneous Activities in Wetlands Permit (MAIW Permit) dated December 1, 2022

APPELLANT’S EXHIBITS:

1. Resume – Debbie Chayet

2. Findings Report – Debbie Chayet

3. SWFWMD ERP Plans- “Boyette Springs Section B, Unit 19”

4. 75762_Aerial Review

5. EPC Plans historical

6. All exhibits listed or used by any other party
7. Cross-examination, impeachment, and rebuttal exhibits

APPELLEES' EXHIBITS:

1. Resume – Chantelle Lee
2. Resume – Dessa Clock
3. Aerial of Property
4. MAIW Application #75762
 - a. Application submitted September 23, 2022
 - b. 75401_Site Inspection Notes and Photos – Used for 75762
 - c. 75762_Site Photos
 - d. Request for Additional Information
 - e. 75762_Revised Site Plan
 - f. File Worksheet
5. All exhibits listed or used by any other party
6. Cross-examination, impeachment, and rebuttal exhibits

WITNESSES

APPELLANT'S WITNESSES:

1. James Anderson (fact witness)
10514 Sedgebrook Drive
Riverview, FL 33569
2. William Inch (fact witness)
Environmental Scientist, Wetlands Management Division
Environmental Protection Commission of Hillsborough County
3629 Queen Palm Drive, Tampa, FL 33619
3. Debbie Chayet (expert witness)
2138 Little Brook Lane
Clearwater, FL 33619
4. All witnesses listed by any other party.

APPELLEE EPC'S WITNESSES:

1. Dessa Clock (expert witness)
Environmental Supervisor I, Wetlands Division
EPC of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619
2. Chantelle Lee (expert witness)
Environmental Supervisor II, Wetlands Division
EPC of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619
3. Joel Juren (fact witness)
10510 Sedgebrook Drive
Riverview, FL 33569
4. Any witness identified or called by any other party.

APPELLEE JUREN'S WITNESSES:

1. Dessa Clock (expert witness)
Environmental Supervisor I, Wetlands Division
EPC of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619
2. Chantelle Lee (expert witness)
Environmental Supervisor II, Wetlands Division
EPC of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619
3. Any witness identified or called by any other party.

STIPULATED FACTS: A concise statement of those facts that are admitted and that will require no proof at the hearing, together with any reservations directed to such admissions

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

1. Appellee Juren owns the subject property, identified as Folio #076836-7916, with physical address of 10510 Sedgebrook Drive, Riverview, FL 33659 (hereinafter “Property”).
2. Appellant owns upland property located east of the Property, identified as Folio #076838-5150, with a physical address of 10514 Sedgebrook Drive, Riverview, FL 33659 (hereinafter “the Appellant Property”).
3. On September 23, 2023, Appellee Juren submitted a Miscellaneous Activities In Wetlands permit application (“MAIW Application”) for nuisance vegetation control and swim and open water access activities at the Property.
4. EPC Scientist Chantelle Lee observed in August of 2022 that nuisance and/or exotic vegetation exists on the shoreline of the Property owned by Appellee Juren.
5. The MAIW application proposed 1) 25-ft wide Swim Access Path to Open Water; 2) Nuisance Vegetation: Removal and maintenance of Wetland Vegetation.
6. The application was reviewed by EPC staff and the MAIW Permit for the above described activities was issued on December 1, 2022.
7. Condition #1 of the MAIW Permit states “In areas outside of the 25-foot wide swim and open water access corridor, only those plant species listed in the table above are authorized for removal.” The “table above” lists the following: “Vines, Torpedograss, Peruvian primerosewillow, Dogfennel, and Cuban bulrush.”
8. Condition #18 of the MAIW Permit states “The work performed under this authorization shall not be conducted on any property, other than that owned by the Applicant, without the prior written approval of that property owner.
9. The location of the Swim and Open Water Swim Access area is not disputed.

DISPUTED ISSUES OF FACT: A concise statement of those issues of fact that remain to be litigated

1. Whether the wetland or other surface water impacts have been minimized to the greatest extent practicable in the MAIW Permit, as required by Section 1-11.09(1)(c) by allowing herbicide treatment.

2. Whether the MAIW Permit causes the least environmentally adverse impacts, as required by Section 1-11.09(1)(c) by allowing herbicide treatment.

3. Whether the boundaries of the approved herbicide application approved under the MAIW Permit are limited to Applicant's Property or even can be limited to Applicant's Property given the laws of hydrology. Note, the Appellees identify EPC Permit Condition 18 in the MAIW Permit and stipulate that herbicides can move due to hydrology. Wetland impacts are authorized on the Applicant's Property.

4. Whether based on #3, when neighboring property owners are given reasonable notice of the activities. Note, the Appellees identify EPC Permit Condition 15 in the MAIW Permit.

STIPULATED ISSUES OF LAW: A concise statement of those issues of applicability of EPC Act, Ch. 1-11 Rules of the EPC, and the Basis of Review on which there is agreement.

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

2. EPC is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended

by Chapter 87-495 (the EPC Act), and the rules promulgated thereunder (the EPC Rules), including specifically, the EPC Wetland Rule, Chapter 1-11.

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

4. Pursuant to Section 1-2.33(d), Rules of the EPC, “[f]act issues not raised by the Notice of Appeal shall be accepted as undisputed.”

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

If a regulatory agency gives notice of intent to grant a permit application, the applicant has the initial burden at a formal administrative hearing of going forward with the presentation of a prima facie case of the applicant’s entitlement to a permit. Once a prima facie case is made, the burden of going forward shifts to the party objecting to the action to present competent substantial evidence, consistent with the allegations of the petition, that the applicant is not entitled to the permit. Unless the objector presents ‘contrary evidence of equivalent quality’ to that presented by the applicant and agency, the permit must be approved. EPC Rules, Section 1-2.33(d); Florida Dept. of Transp. V. J.W.C. Co. Inc., 396 So. 2d at 789-790 (Fla. 1st DCA 1981).

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

DISPUTED ISSUES OF LAW: A concise statement of those issues of applicability of the Act and its Rules that remain for determination by the Hearing Officer

1. Whether the MAIW Permit complies with Section 1-11.09(1)(c) (bolding added):
Section 1-11.09(1)(c):

Where the adverse impact is of nominal consequence to the wetland or other surface water, as defined by Section 62-340.600, F.A.C., the impact will be reviewed as a “Miscellaneous Activities in Wetlands” under Section 1-11.10. **Wetland or other surface water impacts under this authorization shall be minimized to the greatest extent practicable, unless defined herein by size, and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impacts;**

2. Whether the EPC rules under Section 1-11.10 allow or require an assessment of whether a preferential wetland vegetation treatment method, ie., hand removal, mechanical, or herbicide should be considered.

3. Whether the disputed issues of fact identified above are material to the application for the MAIW Permit.

STIPULATION AS TO APPLICATION OF THE RULES OF EVIDENCE

1. The parties stipulate that the Florida Rules of Evidence, Chapter 90, Fla. Stat., shall apply to the extent it does not conflict with Section 6. Paragraph 2. of Chapter 84-446, Laws of Florida and Chapter 1-2, Rules of the EPC.

2. The parties stipulate that copies of original documents are acceptable to the extent the document is reviewed and not objected to on authenticity grounds prior to the hearing by the parties. The parties otherwise reserve the right to raise objections to documents.

PENDING MOTIONS

1. Appellee EPC filed a Motion for Summary Recommended Order (Motion) on April 24, 2023. Appellant’s response time was extended to May 17, 2023. No order on the Motion has been rendered by the Hearing Officer.

ESTIMATED LENGTH OF TIME REQUIRED FOR HEARING

The parties anticipate the hearing can be concluded in one day, scheduled for June 2, 2023.

Respectfully submitted this 17th day of May 2023.

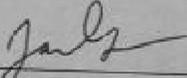
/s/ T. Andrew Zodrow

/s/

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

JAMES ANDERSON,

Appellant,

vs.

EPC Case No.: 22-EPC-015

JOEL JUREN and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,

Appellees.

_____ /

TRANSCRIPT OF: PROCEEDINGS

BEFORE: Patricia A. Petruff, Hearing Officer

DATE: June 2, 2023

TIME: 9:00 a.m.

PLACE: EPC - Roger Stewart Center
3629 Queen Palm Drive
Brandon, Florida

REPORTED BY: Sherry L. Frain
Notary Public
State of Florida at Large

ATTACHMENT 8



RICHARD LEE REPORTING

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JOEL BRENT JUREN
Appeared Pro Se

Also Present:

Mike Lynch, Division Director of Wetlands
Stephanie Stockwell

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1 The transcript of proceedings, taken on
2 the 2nd day of June, 2023, at EPC - Roger Stewart
3 Center, 3629 Queen Palm Drive, Brandon, Florida,
4 before Patricia A. Petruff, Hearing Officer,
5 beginning at 9:03 a.m. reported by Sherry L. Frain,
6 Notary Public, State of Florida at Large.

7 * * * * *

8 PROCEEDINGS

9 HEARING OFFICER: I'm going to call the
10 hearing to order at 9:03 a.m. Do we need to
11 swear the witnesses?

12 MR. ZODROW: We can do that now. Ms.
13 Lee, go grab your ID, and we can swear them in
14 as I call them. We do have some preliminary
15 matters we just have to go through briefly.

16 HEARING OFFICER: Okay. Preliminary
17 matters.

18 MR. ZODROW: Preliminary matters are --
19 and we've all done introductions, so everybody
20 knows who we are. I'll just say we're here on
21 the Environmental Protection Commission EPC
22 case 22-EPC-015, the case of Anderson v. Juren
23 and EPC.

24 As far as preliminary matters, one of the
25 questions is, are we going to invoke the rule,

1 the rule of sequestration. We had a very brief
2 conversation. We didn't finish that decision
3 yesterday. I don't know if we want to do that.
4 We probably should but then we would have to --
5 it's a little different.

6 I've never had to deal with it with video
7 when people are waiting on video. I really
8 don't have an objection, I guess, if witnesses
9 do hear each other. Does anybody have? What
10 is your opinion, Ms. Graham?

11 MS. GRAHAM: I don't have a huge
12 objection either way. I defer.

13 MR. ZODROW: The only concern I have is
14 we'd have to mute during the testimony for the
15 witnesses. We have Ms. Clock. She's our
16 agency representative and a witness, so she's
17 able to watch. Mr. Juren is here, he's
18 himself.

19 Mr. Anderson, he's a representative,
20 obviously. So the only question would be for
21 Debbie Chayet and Chantelle Lee. I don't have
22 an objection if we don't invoke the rule and
23 they just listen. Should we just not invoke
24 the rule, then?

25 MS. GRAHAM: That's fine, then I'll

1 invite Debbie back on.

2 MR. ZODROW: That's fine. I don't have a
3 huge objection to that unless -- do you have
4 any opinion?

5 HEARING OFFICER: No, I have no opinion
6 on it.

7 MR. ZODROW: Okay. Pursuant to the joint
8 prehearing stipulation, we do have joint
9 exhibits. We have Joint Exhibits 1A through H.
10 those are really judicial noticing documents.
11 I don't even know if they should traditionally
12 be called exhibits because they are final
13 orders and they are -- actually they're rules
14 that are implemented in this procedure.

15 But because they're physical paper copies
16 or electronic copies, we thought we would just
17 identify those as Exhibits 1A through H, and
18 that would be the special act that creates the
19 EPC. It would be the Administrative Procedures
20 Rule 1-2. It would be the EPC Wetland Rule
21 1-11. It's the EPC Basis of Review for
22 Authorization of Activities Pursuant to Chapter
23 1-11.

24 It's the final order in Medero v. EPC
25 dated January 28, 2013, the final order, Ogden

1 v. Truex and EPC June 22, 2015, final order of
2 Vance v. Vath August 8, 2015, final order of
3 Criollo v. Johnson, April 19, 2021.

4 And then there's a Exhibit 2, which is a
5 permit, Joint Exhibit 2. I tend to right now
6 to just introduce those into evidence so that
7 we don't have to go through the process each
8 time.

9 MS. GRAHAM: No objection.

10 HEARING OFFICER: Do you have hard copies
11 of those with you today?

12 MR. ZODROW: Yes, we do. We have three
13 copies we can hand out. So right now I'll hand
14 you the whole notebook but understanding in
15 that notebook that EPC has, there is four more
16 exhibits that we'll offer. They're not joint
17 stipulated exhibits. We'll introduce those as
18 we go through the testimony, but you have those
19 in front of you now.

20 HEARING OFFICER: Thank you. So all the
21 exhibits under Tab 1, Exhibits A through H --

22 MR. ZODROW: Yes, that's the judicial
23 noticing.

24 HEARING OFFICER: -- are entered into the
25 record without objection.

1 MS. GRAHAM: Do you have a third copy for
2 us?

3 (Joint Exhibits 1A-H and Joint Exhibit 2
4 received in evidence.)

5 MR. ZODROW: Yes, sorry about that. So
6 those will be the joint exhibits. As I
7 mentioned, we do have the proposed other four
8 exhibits for EPC and we'll raise those during
9 the hearing.

10 The next thing is the order. Typically
11 the burden is on the applicant to show
12 entitlement to a permit under the EPC rules
13 under Chapter 1-2. That shifts when the permit
14 is entered in the application. However, I
15 think Ms. Graham and I already discussed this,
16 that we will go first as the agency, and then
17 Mr. Juren will have an opportunity to -- it's
18 always awkward when there's a pro se because
19 you can't really ask questions of yourself.
20 But I'm sure he gets some opportunity to make a
21 statement. And then we'll close the case and
22 then Ms. Graham will go.

23 The one thing I would like to do is
24 reserve. I do have an opening statement, but I
25 would like to reserve a closing at the very end

1 of the case. I'm sure it's going to be very
2 brief, even though it's after I close my case.
3 Any objection? It's all good?

4 MS. GRAHAM: No objection. And I would
5 say just for the same, that I would have a
6 short opening statement and then we would close
7 it at the end of our case too.

8 HEARING OFFICER: Okay.

9 MR. ZODROW: I want to do the closing at
10 the very, very end when we complete everything.

11 HEARING OFFICER: Yes.

12 MR. ZODROW: I think that's really it for
13 introductory matters at this point. I think it
14 goes to me.

15 HEARING OFFICER: Yes, it does.

16 MR. ZODROW: Anything further from the
17 hearing officer or Ms. Graham before we start?

18 MS. GRAHAM: For the opening statements,
19 are we both doing opening statements at the
20 same time?

21 MR. ZODROW: I have no objection if you
22 do. Yes, you can, or you can wait.

23 MS. GRAHAM: I'll wait.

24 MR. ZODROW: So that brings us to the
25 case today. Today -- again for the record, I'm

1 not sure if I introduced my name for the record
2 yet. I'm Andy Zodrow. I'm the senior attorney
3 to the Environmental Protection Commission of
4 Hillsborough County.

5 I will say right up front, when we refer
6 to EPC, that's the Environmental Protection
7 Commission of Hillsborough County, so you're
8 going to hear a lot of happenings today. And
9 we'll try to make our best effort. There's not
10 that many acronyms, but we'll try to make the
11 best effort to say out the word the first time.

12 So today we have an evidentiary hearing
13 on an amended notice of appeal of an EPC
14 approved MAIW permit, that is a miscellaneous
15 activities and wetlands permit, dated December
16 1st, 2022. That permit is to conduct nuisance
17 vegetation removal, and it authorizes the
18 creation of what we refer to as a swim -- or
19 what the rules refer to as a swim and open
20 water access area on a shoreline of a pond in
21 Hillsborough County.

22 This administrative case falls under
23 Section 9 of Chapter 84-446, Laws of Florida,
24 which is identified as Joint Exhibit 1-A. It
25 also falls under Part 4 of Chapter 1-2, Rules

1 of the EPC as a challenge of an agency action.
2 1-2 is identified as Joint Exhibit 1B.

3 Specifically the agency decision falls
4 under the jurisdiction of the adopted EPC
5 Wetland Rule, Chapter 1-11, identified as Joint
6 Exhibit 1-C, and it also falls under the
7 adopted basis of review which you'll also hear
8 as BOR, which is identified as Joint Exhibit
9 1D.

10 As this, the proposed activity, the
11 reason it falls under the wetland rule is
12 because the proposed activity constitutes
13 clearing within a wetland or other surface
14 water in Hillsborough County.

15 The standard of review for authorization
16 of a wetland impact in Hillsborough County
17 under the EPC rules is found in Section
18 1-11.06(1) where it says, "Upon request to the
19 executive director or authorized agent to
20 review a proposed development with wetlands or
21 other surface waters, an applicant must
22 demonstrate reasonable assurance that the
23 activity will comply with the adopted rules of
24 the commission."

25 I will also note that it is important to

1 note that the previous final orders entered by
2 the commission also state that the burden is
3 one of reasonable assurance that a project will
4 comply with the applicable rules and that
5 reasonable assurance burden concerns reasonably
6 foreseeable contingencies and does not require
7 absolute guarantees.

8 Those are found in the cases Ogden v.
9 Truex, Joint Exhibit 1F, and the Criollo
10 decision in Joint Exhibit 1H. So it really
11 concerns reasonably foreseeable contingencies
12 and does not require absolute guarantees.

13 Now, in this particular case you're going
14 to hear, EPC staff will provide evidence that
15 the agency action in this case, the MAIW permit
16 with the conditions imposed by its reasonable
17 assurance that the commission rules will be
18 complied with, specifically Ms. Clock is going
19 to testify to the EPC program and Ms. Lee will
20 be testifying as to the specific permit and the
21 conditions contained within the permit. The
22 EPC staff will provide evidence that the
23 proposed activity qualifies for a wetland
24 impact in the form of an MAIW under
25 1-11.09(1)© and more specifically described

1 in Sections 1-11.10(1)(b) and ©.

2 Staff will provide evidence that the
3 conditions imposed ensure the activity
4 addresses minimization and that the wetland
5 vegetation treatment will be conducted,
6 located, designed and/or constructed so that it
7 will cause the least environmentally adverse
8 impacts. Staff will also show how the impacts
9 have been minimized where necessary.

10 Now, when I say "necessary," I mean for
11 the 25-foot swim and open water access area.
12 That doesn't need to be minimized because the
13 rule specifically excludes minimization,
14 wherein the specific size is included in the
15 rule. I will note that the 25-foot area has
16 not been disputed, however, so that's not
17 really the main issue, but we have gone through
18 the minimization process.

19 Now, the amended notice of appeal in the
20 joint prehearing statement both have boiled
21 down to dispute the specific method of
22 vegetation treatment. There are no disputes
23 related to the identification of the 25-foot
24 swim and open water access with a nuisance
25 vegetation.

1 There's no dispute the activity qualifies
2 for an MAIW or that the proposed replanting
3 with native vegetation is not adequate or any
4 other matter associated with the permit. The
5 dispute is over the allowed use of herbicides
6 to conduct the wetland vegetation treatment.

7 This case is really and essentially a
8 legal question concerning the ability for the
9 EPC to prohibit the specific method of
10 treatment of wetland vegetation and the method
11 for the creation of the swim and open water
12 access area.

13 Again, just briefly, this particular
14 permit is authorizing -- and you'll hear this
15 through evidence -- the removal of nuisance
16 vegetation and this creation of this access
17 area on Shoreline. It's a pretty basic permit.
18 But you'll hear evidence from the staff
19 explaining that much more in depth.

20 The EPC, however, is concerned about the
21 precedent of appellant's argument that the rule
22 needs to be interpreted in a specific way. The
23 rule specifically gives no preference or
24 hierarchy or requirements for a specific
25 treatment method. That was intentional as the

1 EPC considered the policy implication of having
2 staff select a treatment method for each
3 individual applicant in every single
4 application.

5 Staff in this hearing today will provide
6 evidence that the treatment will be conducted
7 in a manner so that it causes the least
8 environmentally adverse impact. That's the
9 key, the activity will be conducted that way.
10 Using the argument of the appellant to require
11 the applicant to use a specific method of
12 treatment where there is no rule requiring that
13 is not supported by EPC law.

14 Now, someone can certainly argue an
15 interpretation of the rule that the treatment
16 method must be the least environmentally
17 adverse. But that's the real concern for the
18 EPC for purposes of precedence. That
19 interpretation of the rule would lead to
20 potential litigation in every single
21 application and the EPC staff having inquired
22 into matters well beyond their expertise and
23 jurisdiction in the agency, for example, on
24 herbicide toxicity, residence time, solubility,
25 half-life, all of these scientific issues are

1 well beyond the scope of the EPC wetland rule.

2 Now, one could easily argue that under
3 that interpretation, the appellant's
4 interpretation, that the EPC would effectively
5 prohibit all herbicides simply because you
6 could find one other way to find a less
7 environmentally adverse because you wouldn't
8 have to go through all these questions about
9 toxicity and residence time and half-life of
10 each individual herbicide.

11 The simple answer is, staff would
12 probably say hand removal would generally be
13 the least environmentally adverse, but that
14 would lead to obvious problems. The only
15 rational way to interpret the rule is to say
16 that the method chosen by the applicant must be
17 conducted in such a manner as to cause the
18 least environmentally adverse impact.

19 I do want to stress -- this is important.
20 I do want to stress that the staff did include
21 specific conditions in the permit, though, to
22 address minimization and adverse off-site
23 impacts from herbicides. That's important to
24 understand. There are specific conditions and
25 you'll hear about that.

1 Again, going back to the testimony, staff
2 will present evidence that those conditions are
3 included in the permit and that the permit
4 provides reasonable assurance that the nuisance
5 removal by means of herbicide treatment will be
6 conducted in such a manner as to cause the
7 least environmentally adverse impacts.

8 Staff ultimately will also provide
9 evidence that the permit demonstrates
10 reasonable assurance that the activity will
11 comply with the rules of the commission. And
12 that is the end of my opening statement. So at
13 that point, I would like to call Dessa Clock as
14 a witness in the case.

15 * * * * *

16 DESSA CLOCK,
17 having been duly sworn to tell the truth, the whole
18 truth, and nothing but the truth, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ZODROW:

22 Q Good morning, Ms. Clock. Can you state
23 your name for the record and spell your name?

24 A Yes. Dessa Clock, D-e-s-s-a C-l-o-c-k.

25 Q Let's start with your background. Can

1 you tell us about your education?

2 A Yes. I have a bachelor's of science in
3 environmental biology. I also have a graduate
4 certificate for wetlands and water resource
5 management.

6 Q What type of coursework is involved with
7 that environmental biology bachelor?

8 A So for the environmental biology, I took
9 chemistry courses, biology courses, ecology. Some
10 of the more specific course I took were field
11 botany, conservation biology, evolution, coastal
12 plants.

13 Q Okay. Can you describe any professional
14 certifications you hold?

15 A Did you want me to explain some
16 coursework that I took for my graduate certificate?

17 Q Yes, that's fine.

18 A Okay. Because those were more recent. I
19 soils courses, a hydric soil course. I also took a
20 wetlands and water quality course and
21 biogeochemistry of wetlands.

22 Q Any certifications that you've obtained?

23 A So here at the EPC, I obtained a
24 certification as a certified wetland evaluator from
25 the Florida Department of Environmental Protection

1 or FDEP.

2 Q Is that relevant to your job here today?

3 A Yes, it is.

4 Q Why?

5 A It shows that I can identify, accurately
6 identify and delineate wetlands and appropriately
7 document them by applying Chapter -- 62-340 Florida
8 Administrative Codes.

9 Q Does that involve identifying aquatic
10 plants?

11 A Yes, it can.

12 Q Okay. And can you state for the record
13 your place of employment and profession?

14 A Yes, Environmental Protection Commission
15 or EPC.

16 Q How many years have you been with the
17 EPC?

18 A Six-and-a-half years.

19 Q What is your job title?

20 A Environmental supervisor.

21 Q And briefly what are your duties as an
22 environmental supervisor at the EPC?

23 A So as environmental supervisor, I
24 supervise environmental scientists who conduct
25 miscellaneous activities in wetland reviews. I also

1 manage the section. I also conduct miscellaneous
2 activities in wetlands reviews, in wetland
3 delineations and occasionally wetland impact
4 reviews.

5 Q Have you held any other positions at the
6 EPC?

7 A Yes. Formerly I was an Environmental
8 Scientist 1 and 2.

9 Q What were your responsibilities as an
10 ES-1 and 2?

11 A For those, I did a range of reviews
12 including miscellaneous activities, wetland
13 delineations, notice exemptions, mangrove
14 exemptions, development services reviews. I did a
15 bit of Tampa Port Authority reviews as well, all
16 within permitting.

17 Q All right. So as an environmental
18 supervisor at EPC, are you familiar with Chapter
19 1-11 and the basis of review?

20 A Yes.

21 Q How did you become familiar with those
22 rules?

23 A When I was hired by EPC in 2016 and I
24 applied the rules in my daily job.

25 Q What training have you received to

1 conduct EPC permitting, wetland permitting?

2 A So on-the-job training, divisional SOPs,
3 training modules, shadowing senior scientists and
4 managers. I've also attended multiple trainings
5 outside of the agency conducted by other agencies
6 including FDEP, the Southwest Florida Water
7 Management District, the Florida Association of
8 environmental soil scientists and the University of
9 Florida IFAS.

10 Q I'm going to hand you a document
11 identified as Joint Exhibit 1C. I've identified it
12 and Ms. Graham has it. It's Joint Exhibit 1C. Can
13 you identify that document?

14 A Yes. This is Chapter 1-11, wetlands.

15 Q Let's briefly go through 1-11. Can you
16 explain to the hearing officer just generally the
17 rules for wetland permitting for MAIW?

18 A Sure.

19 Q What requires a permit?

20 A Okay. So starting off in Chapter
21 1-11.05, this is where it is identified that
22 development within wetlands is prohibited without
23 the authorization from the executive director or
24 their authorized agent. And within the rule,
25 development is identified in Chapter 1-11.02, and

1 this is where development is identified as
2 activities including clearing. So some of these
3 miscellaneous activities include clearing.

4 If we move on to Chapter 1-11.06, this is
5 where the review of development is identified that
6 the applicant must demonstrate reasonable assurance
7 that the activity will comply with the adopted rules
8 of the commission.

9 Then moving, that moves us to Chapter
10 1-11.07, which is where it is identified that
11 adequate protection must be provided for that
12 activity or for that development. Chapter 1-11.08
13 is not applicable for these activities. And at
14 1-11.09, this is what defines adequate protection or
15 identifies activities that meet adequate protection,
16 specifically Item C, which identifies that
17 miscellaneous activities in wetlands have nominal
18 consequence to the wetlands. And then Chapter
19 1-11.10 identifies what miscellaneous -- what
20 activities are miscellaneous activities in wetlands.

21 Q Okay. Thank you. Looking at Section
22 1-11.09 1©, can you read that into the record
23 where it begins where the adverse impact? Actually,
24 can you just read the whole thing into the record?

25 A Yes.

1 Q Thank you.

2 A "Where adverse impact is of nominal
3 consequence to the wetlands or other surface water
4 as defined by Section 62-340.600 F.A.C., the impact
5 will be reviewed as a Miscellaneous Activities in
6 Wetlands under Section 1-11.10.

7 "Wetland or other surface water impacts
8 under this authorization shall be minimized to the
9 greatest extent practicable unless defined herein by
10 size and shall be conducted, located, designed
11 and/or constructed so that they cause the least
12 environmentally adverse impact."

13 Q And you briefly mentioned this. But are
14 there rules, then, that specifically identify what
15 activities qualify for an MAIW, miscellaneous
16 activities?

17 A Yes, that is Chapter 1-11.10.

18 Q Can you identify what 1-11.10 1(b) and
19 © provide?

20 A Yes. So (b) provides nuisance and exotic
21 vegetation removal in wetlands is miscellaneous
22 activities. It also identifies that there are other
23 activities, and I will kind of read some of them,
24 that they include but are not limited to
25 construction of boardwalks, docks, pilings, aids to

1 navigation, boat lifts, outfall structure and
2 herbaceous vegetation removal for minor swim access
3 areas not to exceed 25 feet of shoreline, et cetera.

4 Q And are there any other rules that go
5 beyond and then further identify the nuisance
6 removal and swim access?

7 A Yes, that is our basis of review.

8 Q I'm handing you a document right now
9 labeled Joint Exhibit 1D, which everybody should
10 have. Can you identify that document for the
11 hearing officer?

12 A Yes. This is the Basis of Review of
13 Authorization for Activities Pursuant to Chapter
14 1-11, Wetlands.

15 Q Was that, in fact, adopted by the
16 commission?

17 A Yes.

18 Q Can you identify in the basis of review,
19 Ms. Clock, where those sections you've just
20 mentioned about nuisance vegetation? In 1-11.10
21 (1)(b) and ©, where are those in the basis of
22 review?

23 A Those are identified in 5.2.1 and 5.2.2.

24 Q Can you read that Section 5.2.1 to the
25 hearing officer?

1 A Yes. "The EPC encourages property owners
2 to remove or control nuisance and exotic plant
3 species from wetlands and other surface waters on
4 their property. An application listing the proposed
5 activities must be submitted for review and approval
6 by the EPC staff.

7 "The application must list the plant
8 species proposed for removal or control and the
9 method to be used. Replanting with native species
10 shall be required where necessary to ensure adequate
11 erosion control and to encourage native
12 renegotiation."

13 Q Ms. Clock, is there a fee for nuisance
14 removal?

15 A Not for the nuisance removal, no.

16 Q Do you know why?

17 A Because EPC encourages it.

18 Q Now, does the basis of review address the
19 method of treatment?

20 A Yes.

21 Q How does it do that?

22 A It does require that the application
23 lists the proposed method to be used for the control
24 of that vegetation.

25 Q Does it identify a specific method that

1 must be used?

2 A No, it does not.

3 Q It has no hierarchy or requirement for
4 preference?

5 A No.

6 Q Okay. The next section, 5.2.2.,
7 unfortunately it's longer. But can you read that
8 quickly for the hearing officer?

9 A Yes. "A maximum 25-foot-wide vegetation
10 clearing zone may be maintained from the shoreline
11 to open water for swim access, open water access,
12 and construction/location of facilities. Native
13 tree species removal is prohibited under this
14 section. The width of all facilities such as docks
15 and boat ramps are considered a portion of the
16 25-foot-wide access area.

17 "If the facilities cannot be located in
18 this area, the width of any docks or boat ramps must
19 be subtracted from the 25-foot swim or open water
20 access area, thus reducing the swim or open water
21 access area width along the shoreline.

22 "To lessen adverse impacts to natural
23 shoreline features, it may be advisable to co-locate
24 facilities. Vegetation clearing beyond the littoral
25 fringe shall be limited to the minimum amount

1 necessary to allow for watercraft to access the
2 waterbody."

3 Q Okay. Thank you. Briefly let's go back
4 to your job position, Ms. Clock. Is review MAIW
5 applications a primary responsibility of your
6 position?

7 A Yes.

8 Q How long have you been reviewing MAIWs?

9 A For six-and-a-half years.

10 Q Approximately how many MAIW application
11 reviews have you performed?

12 A Approximately 275.

13 Q At this point, I'd like to show you a
14 copy of a document that's labeled Appellee's Exhibit
15 2.

16 MR. ZODROW: Hearing Officer Petruff,
17 these all have numbers already assigned to
18 them. Should we start out and just call it
19 Hearing Exhibit 1 or I guess 3 now? Or how do
20 you want to do the numbering? You can do it
21 either way. We can start out and just have new
22 numbers or continue with the numbers that they
23 were identified when we traded them.

24 HEARING OFFICER: Let's continue with the
25 numbers in the notebook so we don't get

1 confused.

2 MR. ZODROW: That's fine, I agree, I
3 agree. I just want to make sure. The thing
4 is, in the notebook now, it's going to be
5 Exhibit 2 of Appellee's exhibits, so that's how
6 we'll refer to it as.

7 HEARING OFFICER: Okay.

8 MR. ZODROW: Okay.

9 Q So that document that is identified as
10 Appellee's Exhibit 2. Can you identify that
11 document?

12 A Yes. This is a Dessa Clock's resume.
13 It's not my revised one, though.

14 MR. ZODROW: This is for everybody here.
15 Ms. Clock found two typos in her resume and
16 she wanted to have an updated one.

17 THE WITNESS: I am so sorry.

18 Q I will have you explain what the
19 difference is.

20 A Sorry for the confusion. So under
21 Environmental Supervisor I, the third bullet point,
22 I had an extra "o" in the word "of." I'm so sorry.

23 Q I apologize, everyone.

24 A Under Environmental scientist I, it's a
25 formatting issue. It should have been the first

1 bullet point. And really the intention was not to
2 have -- it should have read, "Project manager on
3 development review projects." So here is the
4 revised one.

5 MR. ZODROW: Can we give that to you,
6 Hearing Officer Petruff, so we have the
7 corrected version?

8 HEARING OFFICER: Yes.

9 THE WITNESS: I apologize, everyone. I
10 don't mean to cause chaos.

11 MR. ZODROW: I would like to introduce
12 that into evidence as a hearing exhibit
13 identified as Appellee Exhibit 2.

14 HEARING OFFICER: Do you have any
15 objection?

16 MS. GRAHAM: No.

17 HEARING OFFICER: Without objection.

18 (Appellee Exhibit 2 received in
19 evidence.)

20 MR. ZODROW: Thank you. At this time, I
21 tender Ms. Clock as an expert witness in the
22 application of the EPC's wetland regulation,
23 specifically Chapter 1-11 and the basis of
24 review for purposes of miscellaneous activities
25 in wetlands permitting.

1 HEARING OFFICER: Do you have any
2 objection, Ms. Graham?

3 MS. GRAHAM: No.

4 HEARING OFFICER: Do you have any
5 questions of the witness?

6 MS. GRAHAM: Yes, I would like to
7 question the witness.

8 HEARING OFFICER: Go ahead.

9 VOIR DIRE EXAMINATION

10 BY MS. GRAHAM:

11 Q Good morning, Ms. Clock. How are you?

12 A I'm doing good. Thank you.

13 Q Ms. Clock, are you Chantelle Lee's
14 supervisor?

15 A Yes.

16 Q Did you review her work in the issuance
17 of this permit in question?

18 A Yes. Well, I reviewed the permit.

19 Q Is it your position that any impacts
20 outside the four corners of the pond are irrelevant?

21 A Yes.

22 MR. ZODROW: Objection.

23 HEARING OFFICER: This is voir dire for
24 the expert witness.

25 MR. ZODROW: Objection, yes. This is

1 beyond. You can question, Hearing Officer --

2 HEARING OFFICER: This is whether or not
3 we will accept her as an expert witness only.

4 MR. ZODROW: I'm not done with the
5 testimony.

6 MS. GRAHAM: Oh, okay. I'm sorry. Go
7 ahead.

8 HEARING OFFICER: He's not done. Do you
9 have any objection to her being accepted as an
10 expert witness?

11 MS. GRAHAM: No.

12 MR. ZODROW: All right. Very good.

13 HEARING OFFICER: Duly noted, accepted
14 as an expert witness. Go ahead, Mr. Zodrow.

15 BY MR. ZODROW:

16 Q Ms. Clock, I have a document, the permit,
17 labeled Joint Exhibit 2. I'm handing that to you.
18 Can you identify that document? This has already
19 been provided. It's already in evidence as Joint
20 Exhibit 2.

21 A Yes, this is miscellaneous activities in
22 wetlands authorization, EPC Review No. 75762.

23 Q And have you read the permit that was
24 issued that is the subject of this case?

25 A Yes.

1 Q I'm going to hand you another document
2 which is labeled EPC Exhibit 4, or Appellee's
3 Exhibit 4, which is the composite of the
4 application. Are you familiar with that document,
5 the application, or portions of the application?

6 A Yes.

7 Q So let's discuss nuisance removal under
8 the EPC rules. Can you read 1-11.09(2)? Can you
9 read that into the record?

10 A "Consideration shall be made of
11 cumulative impacts of proposed development to the
12 wetland system in combination with other
13 developments which have been or may be proposed in
14 the same drainage basin."

15 Q During an application for nuisance
16 removal, is there a cumulative impact study
17 conducted under that section?

18 A Well, yes. However, it's not an in-depth
19 cumulative impact review, and that is because this
20 is nuisance vegetation removal that is proposed, and
21 that activity is encouraged by the EPC, and it is a
22 benefit to the wetland. And most often when there
23 is a lot of vegetation, nuisance vegetation,
24 replanting is required.

25 So if we have multiple proposed

1 developments of nuisance removal and replanting on
2 one area or one wetland, that is overall benefit to
3 that wetland or other surface water.

4 Q So in this particular permit, are you
5 familiar with what's proposed and what are the
6 conditions?

7 A Yes, for this particular permit, yes.

8 Q Was there replanting proposed for this
9 permit?

10 A Yes. There was replanting for this
11 permit.

12 Q Let's discuss the swim and open water
13 access you identified in the basis of review. Can
14 you explain to the hearing officer what that is,
15 swim and open water access?

16 A Okay. So the commission has identified
17 that property owners along a lake front or a pond
18 front shall have access to the open water, and
19 therefore they can have a 25-foot-wide cleared area
20 for whatever activity they would like to conduct
21 within that access area. So the intent is that they
22 gain access to the open water.

23 Q So under swim and open water access in
24 combination with other swim and open water access
25 permits, do you look at the combination of those

1 under a cumulative impact study?

2 A So the width or the area of that swim and
3 open water access has been identified by the
4 commission as 25-foot wide. So therefore it does
5 not need to be reduced.

6 Q Okay. Do you know anywhere in the
7 county, have they ever been denied because there's
8 too many swim and open water accesses?

9 A No.

10 Q Is the 25-foot size ever reduced on a
11 waterbody? Do you make it smaller?

12 A No. I will say that not everyone
13 proposes a 25-foot-wide swim access. But when they
14 do, we don't tell them they can only have 10 feet.
15 No, we don't ask that they reduce it.

16 However, as the rule states, if they do
17 have other facilities such as a dock walkway or a
18 boat ramp, then they need to co-locate it within
19 that swim access or reduce it from that width.

20 Q Are there any other facilities on this
21 property, Mr. Juren's property?

22 A Not that I am aware of. I'm looking at
23 an aerial, so the answer is no.

24 Q Thank you. Now, to your knowledge, has a
25 cumulative impact study ever been used for

1 herbicides in your career?

2 A Not that I'm aware of.

3 Q Do you know why it wouldn't be?

4 A That is because the rule states that
5 cumulative impacts are for the proposed development,
6 not for the proposed method.

7 Q Quickly 1-11.09©, can you read the
8 second part about the wetland and surface water
9 impacts shall be minimized? Can you read that?

10 A "Wetland or other surface water impacts
11 under this authorization shall be minimized to the
12 greatest extent practicable unless defined herein by
13 size and shall be conducted, located, designed
14 and/or constructed so that they cause the least
15 environmentally adverse impacts."

16 Q Okay. And is there -- what is the
17 purpose of that? How is that implemented?

18 A The purpose of that is so that we are
19 ensuring that the activities proposed under
20 miscellaneous activities are reduced impacts. And
21 that is, you know, opposed to an activity that we
22 consider a wetland impact that requires that the
23 impact meets reasonable use and be mitigated for.

24 It's also in here so that even after we
25 address that it meets the rule, that we go a step

1 further in our permits to ensure that we are
2 providing conditions that address any potential
3 adverse impacts that may occur from that activity we
4 are approving.

5 Q So how do you actually in the permit
6 address those potential impacts?

7 A We provide conditions or we include
8 conditions.

9 Q All right. How is the swim and open
10 water access authorization implemented under the
11 minimization requirement?

12 A So, as I've stated before, we don't
13 require that the width is necessarily minimized, but
14 we do look at its proposed location along the
15 shoreline. So is it co-located with the facilities
16 that exist, or is there an area along the shoreline
17 that has less native vegetation that's a better
18 location for it, or is it an area that's already
19 clear and void? We would prefer that the swim
20 access is located there.

21 Q Can you provide the hearing officer an
22 example of conditions as a result of this
23 minimization ensuring the least environmentally
24 adverse impacts?

25 A For just in general or a specific

1 activity?

2 Q In general, in general.

3 A Okay. We provide -- well, this is the
4 most important one, being that, if herbicides are
5 proposed and used, that they are approved by the
6 environmental protection agency for aquatic systems,
7 and that the herbicide is used according to the
8 EPA's labels.

9 Q Okay. Are there other conditions that
10 might be imposed because of this language,
11 minimization and least environmental adverse
12 impacts? What other conditions would you include?

13 A Okay, yeah. So for that we are requiring
14 -- or including conditions that are ensuring that
15 the permittee is removing or controlling the
16 specifically approved vegetation so that they are
17 also avoiding, or not touching, the native
18 vegetation that is there.

19 We also require that replanting is done.
20 So our conditions for replanting also include
21 survivability requirements. We ask for plant
22 diversity to be included when they are planting.
23 And that -- I mean, I can go on, but I think that
24 was enough. Thank you.

25 Q That's enough for now.

1 A Okay.

2 Q I presume you have like template
3 conditions. But do you have different conditions
4 for different site circumstances?

5 A Yes. So, as I've stated, if replanting
6 is required, we do have replanting conditions. And
7 sometimes there are really large vegetation --
8 nuisance vegetation removals proposed or vegetation
9 removal is proposed on a shoreline that experiences
10 a lot of wave action.

11 So we're afraid that if they remove
12 everything at once, there's going to be serious
13 erosion. So therefore we look at those and require
14 a phased removal with replanting before they remove
15 the other phase. Also when there is vegetation that
16 might be mistaken for native vegetation such as
17 maidencane verse torpedo grass, we'll modify the
18 conditions to make it very clear this area is
19 maidencane, it's native, do not touch it.

20 Q Circling back to the method of
21 treatment -- and you may have already said this --
22 but do you ask the applicant to provide the method
23 of treatment?

24 A Yes.

25 Q Why?

1 A Because it's required by the basis of
2 review.

3 Q Do you know what purpose that serves
4 knowing? Is it treated differently depending on the
5 treatment method, the permit?

6 A Yes, yes. So, depending on the method,
7 we may modify or -- modify conditions or ensure that
8 specific conditions are included in the permit for
9 that proposed method.

10 Q Could you give some examples of different
11 treatment methods?

12 A Yes. So let's say the applicant is
13 proposing jetting. That could cause --

14 Q What is jetting?

15 A Sorry. Jetting is using like a pump that
16 pushes air or water through it to release the roots
17 of the vegetation. So it's a way to kind of loosen
18 it up so you can remove it easier. However, this
19 can cause turbidity if it is conducted for too long.
20 So therefore we require turbidity cure ends and that
21 they shut off the pump when they're not using it.

22 Other methods, when mechanical is
23 proposed -- and sometimes mechanical is necessary
24 for, you know, say, a very large -- or, excuse me,
25 heavy machinery. If heavy machinery is proposed for

1 a very large stand of Brazilian pepper or something,
2 we know heavy machinery may cause issues in the
3 wetland. So we condition that they require erosion
4 control devices, sometimes we require a mat. We
5 also require that any temporary disturbance is fixed
6 before the site is left.

7 Q Does EPC staff ever tell the applicant
8 what method they must use?

9 A No, we do not. We may advise what method
10 to use if they ask. For instance, going back to the
11 Brazilian pepper example, sorry it's not here, but
12 it's a clear example that they should use hack and
13 squirt method. So sometimes people just don't know
14 how to keep it from regrowing, so they may ask and
15 we advise.

16 Q So why don't you just require it in the
17 permit? Why don't you select the method for them?

18 A Because the rule doesn't allow us to do
19 that. The rule states that the applicant must
20 provide that to us.

21 Q Can you tell the hearing officer what
22 treatment method is the most adverse to the
23 environment?

24 A Well, kind of going back to what I just
25 explained, I would say, you know, heavy machinery or

1 mechanical means may be the most adverse to the
2 environment.

3 Q Does it really depend on the site
4 conditions?

5 A Absolutely, absolutely. I mean, yearly,
6 it could depend throughout the year. You know, in
7 the dryer season, it may not be as adverse. So we
8 may also condition that you can only do the work at
9 low water levels.

10 Q Could you objectively select the least
11 adverse impact for treatment methods for all wetland
12 treatment? Could you just pick one?

13 A It's difficult. But one could say that
14 hand removal would most often be the least
15 environmentally adverse method, but I don't think
16 that it is always the most -- I don't think it will
17 always do the trick for the site, so it may not be
18 the most reasonable method.

19 Q Do you know why the EPC staff wouldn't
20 require hand removal when it is the trick, when it
21 may work? Why don't you require it?

22 A That's because the rule does not require
23 one method over the other. It also does not prefer
24 one method over the other.

25 Q In the event the rule were identified to

1 select the least environmentally adverse method,
2 what would likely be the outcome of that?

3 A Can you repeat the question?

4 Q If the rule was interpreted that you must
5 always select the least environmentally adverse
6 method of wetland vegetation treatment, how would
7 that affect your job?

8 A Well, I would expect at that point, we
9 would always require that they use hand removal.

10 Q Let's discuss herbicide treatments
11 briefly. Is there any prohibition in the EPC
12 wetland rules concerning herbicide use in
13 Hillsborough County?

14 A No. There is -- actually in Chapter
15 1-14, which is the mangrove rule, there is a
16 prohibition for use of herbicides to remove leaves
17 of mangroves, but there is no other -- not for this,
18 the proposed activity, which is nuisance removal,
19 and swim and open water access, and there are no
20 mangroves on site.

21 Q All right. So, Ms. Clock, in your
22 template permits that you've created, do you have
23 specific conditions designed for herbicide use?

24 A Yes.

25 Q Can you say for the record those

1 conditions or what that condition is depending on
2 what you have?

3 A Would you like me to read them?

4 Q Yes.

5 A Okay. So we have two which are specific
6 to herbicide use, one being that all herbicide
7 proposed for use must be approved for use in aquatic
8 systems by the Environmental Protection Agency and
9 must be applied in accordance with the label
10 directions.

11 If herbicides are proposed for use in
12 removing nuisance species, care must be taken so
13 that only the target nuisance species are treated.
14 If native non-nuisance species are removed or
15 destroyed by this treatment, replanting of these
16 species will be required in addition to the
17 replanting required in this permit.

18 Any replanting of unauthorized native
19 non-nuisance species that are removed must be
20 completed within 30 days of the unauthorized
21 destruction removal or within 30 days of the written
22 request of the EPC. Other conditions may be
23 requested to ensure replanting success.

24 The second one that we include is the
25 applicant shall make a reasonable effort to notify

1 potential users of the treated waters, listing the
2 types of herbicides and length of any use
3 restrictions imposed by the label. Prior
4 notification shall be accomplished by notices
5 distributed to residences or signs posted access
6 points near the authorized area.

7 Q Specifically, why do you include the
8 notice provision? What's the purpose of that?

9 A Right. So that is if, say, the herbicide
10 has a water-use restriction on it that is imposed by
11 the EPA label, then we want anyone who may swim in
12 it or use the water for watering to be aware of that
13 restriction.

14 Q Briefly, let's discuss where some of the
15 applications for herbicide use have occurred. Is
16 there a limit of use of herbicides in Hillsborough
17 County for geographic areas or waterbodies or
18 waterbody classifications?

19 A No.

20 Q If someone sought a nuisance removal or
21 swim and open water access in the Alafia River,
22 would you prohibit herbicides in that permit?

23 A No, as long as the activity met the rule.

24 Q Are you familiar with a Class 1
25 waterbody?

1 A Yes.

2 Q Are there any in Hillsborough County?

3 A Yes, there are.

4 Q First, what is a Class 1 waterbody?

5 A It's for potable water, so drinking water
6 supply.

7 Q Are there any in Hillsborough County?

8 A Yes, there are two.

9 Q Can you identify those?

10 A The Hillsborough River and Cow House
11 Creek.

12 Q The Hillsborough River right above the
13 reservoir. Right?

14 A Yes.

15 Q On the level of protection, where would
16 you put a Class 1 waterbody?

17 A So Class 1 waterbody is the highest
18 protection by the DEP.

19 Q Would the herbicide treatment under an
20 MAIW permit be prohibited under Chapter 1-11 in a
21 Class 1 waterbody?

22 A No.

23 Q Are you familiar with the applicant's
24 property?

25 A Yes.

1 Q We have the drawing or the picture behind
2 and in the exhibit so you're familiar. Can you look
3 at the pond? Is that waterbody? That's the
4 waterbody that's the subject of this case?

5 A Yes.

6 Q How would you compare a Class 1 drinking
7 water waterbody compared to the applicant's property
8 for purposes of environmentally sensitive areas?

9 A Well, all wetlands and other surface
10 waters serve their purpose. We don't pick
11 favorites. But I would say, if you were concerned
12 about adverse impacts, you would probably be more
13 concerned about the water drinking supply, Class 1.

14 Q All right. So what would be the
15 conditions that are imposed for nuisance vegetation
16 removal and swim and open water access for herbicide
17 treatment for even a Class 1 waterbody? Would the
18 conditions be different?

19 A No, they would be the same. Depending on
20 property ownership, maybe some more noticing.

21 Q Okay. So what agency do you rely on for
22 purposes of -- what government agency do you rely on
23 for purposes of vetting herbicides?

24 A The Environmental Protection Agency. I
25 rely on them for identifying which herbicides are

1 approved for aquatic systems, and I expect that
2 they're also writing labeling instructions.

3 Q And just for the record, that's United
4 States Federal Agency EPA?

5 A Yes.

6 Q Let's switch quickly to off-site impacts.
7 How are potential off-site impacts from herbicides
8 addressed in the permits in general?

9 A So off-site impacts are not allowed. In
10 fact, we condition it that the work performed under
11 this authorization shall not be conducted on any
12 property other than that owned by the applicant
13 without the prior written approval of that property
14 owner. And that is a condition that we always
15 include.

16 Q Okay. And are you concerned -- I think I
17 may have covered this already. Are there concerns
18 about herbicides being detrimental to animal life?

19 A Are there concerns or am I concerned?
20 I'm sure there are concerns in general, yes.

21 Q Well, what do you rely on for those
22 concerns?

23 A Right. So I rely on the EPA to make that
24 judgment call that these herbicides, whatever are
25 proposed, are approved for use in aquatic systems.

1 Q And the labeling instructions?

2 A And the labeling instructions, as I
3 stated.

4 Q How does a permit specifically prevent
5 the applicant from just over-applying herbicides,
6 from dumping the whole container? What is the
7 condition there?

8 A Well, that it's applied in accordance
9 with the label instructions, and I don't think the
10 label instructions would allow that.

11 Q So concerns were raised -- actually, I'll
12 have Chantelle discuss that. Do EPC rules have a
13 history of -- have a consideration of past history
14 and past violations?

15 A No, we do not.

16 Q Does the EPC ever deny or insert special
17 conditions on the permit for applicants with a
18 specific history?

19 A No.

20 Q So, Ms. Clock, in your expert opinion and
21 to a reasonable degree of certainty, does the
22 subject permit along with the conditions in the
23 permit for the use of herbicides for nuisance
24 vegetation control and swim and open water access
25 activities provide reasonable assurance that the

1 activity will comply with the EPC wetland
2 regulations, Chapter 1-11 and the basis of review?

3 A Yes.

4 MR. ZODROW: I have no further questions
5 for Ms. Clock.

6 HEARING OFFICER: Do you have any
7 questions?

8 MS. GRAHAM: Yes, Officer.

9 CROSS-EXAMINATION

10 BY MS. GRAHAM:

11 Q Good morning Ms. Clock, a couple
12 questions for you. So you reviewed the work? You
13 reviewed this permit?

14 A Yes, I reviewed the permit.

15 Q Is it your position that any impacts
16 outside the pond that the activities in this
17 permitted allow are irrelevant?

18 A Can you repeat that question?

19 Q Yes. Is it your position that any
20 impacts outside of the pond are irrelevant as
21 related to the activities that are allowed in this
22 permit?

23 A I wouldn't say that they're irrelevant.
24 But they would be -- if there are any outside of the
25 pond, that would be a violation of the

1 authorization.

2 Q And how do you enforce that?

3 A We would hope, because we don't have eyes
4 all over the county, but we would hope that someone
5 would put in a complaint to the EPC and we would
6 investigate that.

7 Q Is it your position that any connection
8 of this pond to another environmentally sensitive
9 area is relevant?

10 A Again, I would not use the word
11 "irrelevant." Can you rephrase that question?

12 Q In your review of this permit, was there
13 any consideration given to the impact of the
14 activities on environmentally sensitive areas around
15 this pond?

16 A Well, they are outside of the property
17 boundaries. They're outside of the proposed area.

18 Q So the answer is no. Right?

19 A Well, can you repeat the question?

20 Q Yes. Is it your position that any
21 connection of the pond to another environmentally
22 sensitive area was not considered in the issuance of
23 this permit?

24 A So our rule does not require that we
25 evaluate areas well beyond the proposed activity.

1 Q Have you ever visited this site?

2 A I personally have not, no.

3 Q Are you aware that there have been

4 sandhill cranes observed on this site?

5 A I am not aware of that.

6 Q Would that make a difference in your

7 analysis?

8 A Can you repeat the question?

9 Q Yes. Would it make a difference in your
10 analysis whether sandhill cranes had been observed
11 on this site?

12 A What are the sandhill cranes doing?

13 Q Imagine they're baby sandhill cranes.

14 A Our rule states that these activities do
15 not apply to wetlands or other surface waters that
16 serve a significant habitat such as roosting,
17 nesting or denning areas for state listed,
18 threatened or endangered species. So I don't have
19 an answer to that because I don't know what they
20 were doing, I was not there.

21 Q So it would be relevant, though, if --

22 A I would investigate it.

23 Q Okay.

24 A If I saw them while I was on site at my
25 site inspection.

1 Q What is EPC's protocol for determining
2 whether there are listed species on site?

3 A I must see that they are -- since you're
4 talking about a baby, are they nesting within that
5 wetland, in that area.

6 Q Let's talk about the rules a little bit.
7 You have a policy background. Right?

8 A No.

9 Q You don't have a policy background?

10 A No.

11 Q And you're not an attorney?

12 A No.

13 Q And so you implement these rules just as
14 you've heard -- well, tell me. How did you
15 determine how to interpret these rules?

16 A I have worked at the agency for
17 six-and-a-half years, and I have taken a lot of lead
18 from my attorneys in the interpretation of the
19 rules.

20 Q Okay. So let's go back to 1-11.09(2).
21 Can you read that section again?

22 A "Consideration shall be made of
23 cumulative impacts of proposed development to the
24 wetland system in combination with other
25 developments which have been or may be proposed in

1 2 the same drainage basin."

2 Q And you had earlier testified that that
3 doesn't apply to an MAIW permit. Is that correct?

4 A I did not say that, no.

5 Q You had said that the proposed
6 development -- you had said that it wouldn't count
7 for this particular permit?

8 A No, I did not.

9 Q Okay. So it's your position that this --
10 that cumulative impacts should be evaluated for this
11 specific permit?

12 A That is what I said for nuisance removal.

13 Q Okay. And to clarify, it is your
14 position that the clearing, it does go under the
15 definition of development under 1-11.02. Correct?

16 A Yes.

17 Q In 1-11.09 you had read for us under 1©
18 the last sentence that talks about least
19 environmentally adverse impacts. Correct?

20 A Yes.

21 Q Are there any other areas within 1-11.09
22 that use the term "least environmentally adverse
23 impact"?

24 A Under 1-11.09?

25 Q Yes.

1 A No.

2 Q Thank you. Let's go to 5.2.1 of the
3 basis of review.

4 A Okay.

5 Q So that I understand, there is not some
6 kind of general permit that people just register for
7 for a nuisance vegetation control. Is that correct?

8 A Not for vegetation that is emergent along
9 the shoreline.

10 Q So the individual environmental
11 circumstances are evaluated in each permit?

12 A Yes.

13 Q Okay. And under 5.2.1, EPC staff does
14 not have to approve every single permit that's
15 applied for. Is that correct?

16 A Well, if they can -- we have the ability
17 to deny a permit, yes. However, we would have to
18 prove that the activity does not meet some specific
19 part of the rule.

20 Q Okay. And have you denied permits
21 before?

22 A For this type of activity?

23 Q Right.

24 A No.

25 Q Okay. And so it says the application

1 must list the plant species proposed for removal.
2 Why is that relevant?

3 A Well, that's very relevant because we
4 need to go out and ensure that the proposed
5 vegetation is, in fact, nuisance and is, in fact,
6 what the property owner believes it is. I gave a
7 good example before of maidencane verse torpedo
8 grass.

9 Q And so that is relevant. And if that as
10 a criteria, if that weren't correct, you would say,
11 "We need to correct this"? Is that correct? Is
12 that right?

13 A I would absolutely have a conversation
14 with the property owner and I would condition the
15 permit that way.

16 Q And so then in that same sentence, it
17 does say -- so to read the whole sentence, the
18 application must list the plant species proposed for
19 removal or control and the method to be used. So
20 the method to be used, that is relevant in your
21 analysis as well. Is that correct?

22 A Yes. The reason we ask for the method is
23 so that we can ensure that it is a reasonable method
24 and so that we can ensure that we are conditioning
25 the permit appropriately.

1 Q How would you determine it's a reasonable
2 method?

3 A Well, that would mean, are you trying to
4 use a backhoe to remove cattails? That is not a
5 reasonable method.

6 Q Have you denied these types of
7 applications that include herbicide before?

8 A No.

9 Q You've never denied an application for
10 herbicide?

11 A No.

12 Q Have you ever denied an application with
13 mechanical removal?

14 A I think I answered your question before,
15 that I've never denied a permit of this type. I
16 would also like to clarify that the application
17 review process is from the receipt of an application
18 to the issuance of the permit, and so we work with
19 the property owner, depending on the site,
20 throughout that review process.

21 Q Do you take bioaccumulation into account?

22 A I depend on the Environmental Protection
23 Agency to determine the application methods of that
24 herbicide.

25 Q So if someone hypothetically had a pond

1 that had an egregious amount of phosphorous in it
2 and they came to you and said, "I want to dump a lot
3 more phosphorous in this pond," even though there
4 had been already a significant nutrient load, would
5 that have any bearing on whether or not you would
6 allow that type of activity? Now, I know that this
7 is not a nuisance vegetation issue.

8 A I would like you to rephrase that
9 question, please.

10 Q I'm giving an example where -- let's say
11 we're not talking about herbicides. We're talking
12 about some other kind of contaminant that is
13 introduced into a pond or a waterbody such as
14 phosphorous and the EPC knew that there was already
15 a significant amount of phosphorous that was in that
16 pond and there was an application that wanted to add
17 more. Would -- how would the EPC analyze that?

18 A I don't think that's relevant to this
19 type of application that we're talking about.

20 Q So bioaccumulation is not relevant for
21 your analysis?

22 A I rely on the EPA's regulations of
23 herbicides.

24 Q Are you a certified herbicide or
25 pesticide applicator?

1 A No.

2 Q Have you had any special training in
3 herbicides?

4 A We actually had an herbicide applicator
5 present to us years ago, but, no.

6 Q So how long was that presentation?

7 A Excuse me?

8 Q You said that you had a presentation. I
9 mean, was that like an hour or like a day long, like
10 a week long? What was it?

11 A It was a few hours.

12 Q It was few hours. Okay. Did you draft
13 any of these EPC rules under 1-11?

14 A Under 1-11?

15 Q Yes.

16 A Did I write them?

17 Q Yes.

18 A No.

19 MS. GRAHAM: No further questions. Thank
20 you very much.

21 HEARING OFFICER: Any redirect?

22 MR. ZODROW: Very, very quick on redirect
23 about the denial of a permit.

24 THE WITNESS: Um-hum.

25 REDIRECT EXAMINATION

1 BY MR. ZODROW:

2 Q In the event an application comes in
3 that's incomplete or doesn't address everything,
4 what does the staff generally do? What's issued?

5 A We request additional information.

6 Q And if ultimately the information is
7 never provided or -- you wouldn't approve the permit
8 if they didn't satisfy the request. Correct?

9 A Correct, because I need reasonable
10 assurance --

11 Q Okay.

12 A -- that they will meet the rule.

13 Q And you would advise the applicants that
14 they will get a denial if they don't provide
15 additional information. Correct?

16 A Yes.

17 MR. ZODROW: I have no further questions.

18 HEARING OFFICER: Thank you. Mr. Juren,
19 do you have any questions of this witness?

20 MR. JUREN: Thank you. I think I'll ask
21 one.

22 CROSS-EXAMINATION

23 BY MR. JUREN:

24 Q Based on the specific permit that we're
25 discussing today, are you aware of engagement back

1 and forth concerning the rules that would have to be
2 followed and the planning requirements that were
3 laid upon this permit during the application
4 process?

5 A Yes, I have reviewed the file, and it
6 appears that you and Chantelle had a lot of back and
7 forth and modifications to your application to
8 ensure that you were meeting the rule.

9 MR. JUREN: Okay. Thank you. That's my
10 only question.

11 HEARING OFFICER: Thank you. Do you have
12 another witness?

13 MR. ZODROW: I do have another witness.
14 Ms. Lee will testify next, and she is online.
15 You are released from the witness chair, Ms.
16 Clock. Can we take a five-minute break?

17 HEARING OFFICER: Yes.

18 (Recess from 10:23 a.m. to 10:35 a.m.)

19 HEARING OFFICER: We'll go back on the
20 record at 10:35.

21 MR. ZODROW: I am calling Ms. Chantelle
22 Lee. Do you have your driver's license? I
23 forgot. I apologize.

24 (Ms. Lee publishing driver's license.)

25 * * * * *

1 CHANTELLE LEE,
2 having been duly sworn to tell the truth, the whole
3 truth, and nothing but the truth, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ZODROW:

7 Q Good morning, Ms. Lee. Can you start out
8 and tell the hearing officer your name and spell it
9 for the record?

10 A Yes. My name is Chantelle Lee. My first
11 name is C-h-a-n-t-e-l-l-e, last name L-e-e.

12 Q Okay. Let's start out with your
13 background. Can you describe your educational
14 background and any degrees?

15 A Yes. I have a bachelor's in
16 environmental science and policy.

17 Q What type of coursework is involved in a
18 bachelor's in environmental science and policy?

19 A Just environmental-science-oriented
20 courses like biology, wetland environments and
21 ecology.

22 Q Can you describe any certifications,
23 professional certifications, that you have?

24 A Yes. So, like I said, I'm a certified
25 wetland evaluator under the FDEP.

1 Q What's the relevance of the CWE
2 certification?

3 A Yes. So I'm certified to delineate
4 wetland boundaries. We were tested in three
5 categories of a level, vegetation, hydrosols and
6 hydrologic indicators.

7 Q Can you state for the record your place
8 of and profession?

9 A It is the Environmental Protection
10 Commission of Hillsborough County, and I'm an
11 Environmental Scientist II.

12 Q How many years have you been at the EPC?

13 A It's been a little over three years.

14 Q What are your duties as an Environmental
15 Scientist II?

16 A I work in the assessment section. My
17 primary duties are activities in wetlands, project
18 reviews and also conducting wetland delineations.

19 Q So as an environmental scientist II, are
20 you familiar with the EPC wetland rule and the basis
21 of review?

22 A Yes, I am.

23 Q And how did you become familiar with
24 these rules?

25 A So primarily through on-the-job training

1 and, of course, in my daily job task.

2 Q Can you briefly explain to the hearing
3 officer what MAIW permitting is?

4 A So MAIW permitting involves projects that
5 were deemed of nominal consequence to wetlands or
6 other surface waters, which include construction of
7 docks, boat ramps, replacement seawalls or other
8 shoreline stabilization. It also includes nuisance
9 vegetation removal and a 25-foot swim and open water
10 access.

11 Q What training have you received to
12 conduct MAIW permitting?

13 A I have done various trainings,
14 essentially on-the-job training with supervisors and
15 managers and colleagues, also shadowing in the
16 field. I've also had plant training and internal
17 plant training and also an external advanced plant
18 identification course with the Brooker Creek
19 Preserve Educational Center, and then I've also had
20 external training with the FDEP and SWFWMD,
21 Southwest Florida Water Management District, with
22 wetland delineation training.

23 Q Is reviewing MAIW applications a primary
24 responsibility of yours?

25 A Yes, and also conducting wetland

1 delineations.

2 Q How long have you been responsible for
3 reviewing applications for MAIWs?

4 A So the entirety of the three years.

5 Q Approximately how many applications for
6 MAIWs do you think you've looked at?

7 A Approximately definitely over 100.

8 Q Okay. I know you're remote. I have a
9 document that I'm showing. I don't know if you can
10 see it, I don't know how we do that. But it is
11 labeled the Appellee's Exhibit 2 -- actually,
12 Appellee Exhibit 1. It's a resume. Are you
13 familiar with your resume, or can you identify the
14 document? I don't know if you can see that.

15 A It does appear as though that's my
16 resume.

17 Q I was going to ask you, do you have a
18 copy of the exhibits on line in front of you as they
19 are labeled?

20 A Yes.

21 Q The document that's titled "Appellee
22 Exhibit 1" --

23 A 1, yes, I do have a copy, yes.

24 Q Is that a true and accurate copy of your
25 resume?

1 A Yes.

2 MR. ZODROW: I would like to move that
3 into evidence as the hearing exhibit identified
4 as Appellee Exhibit 1.

5 HEARING OFFICER: Any objection?

6 MS. GRAHAM: No objection.

7 MR. ZODROW: Also at this time, I'd like
8 to tender Ms. Lee as an expert witness in the
9 application of the EPC's wetland rule,
10 specifically Chapter 1-11 in the basis of
11 review for purposes of miscellaneous activities
12 in wetlands permitting.

13 HEARING OFFICER: Any objection, Ms.
14 Graham?

15 MS. GRAHAM: I have a couple of
16 questions.

17 MR. ZODROW: Voir dire.

18 HEARING OFFICER: Go ahead.

19 VOIR DIRE EXAMINATION

20 BY MS. GRAHAM:

21 Q Good morning, Ms. Lee. How are you?

22 A Good morning. I'm doing well. Thank
23 you.

24 Q Have you ever taken a class on herbicides
25 or pesticides?

1 A No, I have not.

2 Q Are you a certified pesticide applicator?

3 A No.

4 Q During your deposition, you had said that
5 you had reviewed over 500 of these MAIW permits.
6 But you just testified that it was probably over
7 100. Can you please clarify?

8 A Yes, of course. And I realized this
9 yesterday when we were discussing this, so I
10 apologize for the discrepancy. However, our
11 database is kind of difficult to navigate when
12 trying to generate reports under how many MAIW
13 projects we have been assigned to. A lot of times
14 there may be duplicates due to the way we insert
15 revised site plans and things like that.

16 So during my previous report, I did
17 notice the number was over 500, and then that
18 reminded me that may not be correct. So, yes, I
19 understand that there is a discrepancy between the
20 numbers, but it's definitely over 100.

21 Q How long have you worked with the EPC?

22 A I've worked with the EPC for three years,
23 a little over three years.

24 MS. GRAHAM: No further questions.

25 HEARING OFFICER: Do you have any

1 objection?

2 MS. GRAHAM: I mean, I would have -- I
3 have no objection to Ms. Chantelle Lee
4 testifying in her capacity as staff of EPC. I
5 would have an objection of her testifying as to
6 anything involving expertise on herbicides,
7 pesticides or botany.

8 MR. ZODROW: Can we qualify that to the
9 application of applying herbicides, those kind
10 of things? Because she reviews -- she has the
11 ability to review what's EPA approved in the
12 labeling instructions, that's what I would like
13 to have her qualified.

14 But we will concede that she's not an
15 expert in applying that -- and I'm speaking for
16 you, Ms. Lee, so you can argue with me. But I
17 don't think you're an expert in applying them
18 or the toxicity or residence, those kind of
19 questions. So I don't know how we articulate
20 that exactly? Can we say that she's an expert
21 in applying the EPC rules in regards to
22 herbicide treatment but she's not an expert in
23 toxicity of --

24 MS. GRAHAM: I mean, I would say
25 something like, we agree that she is an expert

1 in her position with the EPC to apply the rules
2 to these permits.

3 MR. ZODROW: I'm okay with that.

4 MS. GRAHAM: But no further than that.

5 HEARING OFFICER: Okay.

6 MR. ZODROW: I am okay with that.

7 HEARING OFFICER: All right.

8 MR. ZODROW: Frankly, you can object if I
9 go beyond the scope, certainly, and we can
10 address it at that point, but I'm good.

11 MS. GRAHAM: Okay.

12 BY MR. ZODROW:

13 Q Ms. Lee, are you familiar with Mr. Juren
14 and this property?

15 A Yes.

16 Q Can you tell the hearing officer how you
17 became familiar with Mr. Juren and this site?

18 A Yes. I first spoke with Mr. Juren during
19 the first application review that was submitted by
20 Mr. Greco. So we spoke about -- verbally on the
21 phone about the 25-foot swim and open water access
22 areas and shoreline treatment of nuisance
23 vegetation.

24 We also spoke about replanting
25 requirements. So I advised him to apply for the

1 MAIW application for the 25-foot swim and open water
2 access and nuisance vegetation removal.

3 MR. ZODROW: During Ms. Clock's
4 testimony, I had provided her a copy of the
5 application that was included in the notebook
6 is as Exhibit 4, Appellee's Exhibit 4. I don't
7 think I offered that into evidence. Did I?

8 HEARING OFFICER: No.

9 MR. ZODROW: No, I don't think I did. So
10 I would like to introduce --

11 Q Are you familiar with that application
12 and that document labeled Exhibit 4, Appellee's
13 Exhibit 4?

14 A Yes.

15 Q Okay. And the form that you saw in the
16 Appellee's exhibit list, is that the true and
17 accurate copy that you know of?

18 A Yes.

19 MR. ZODROW: I would like to introduce
20 that into evidence as Appellee Exhibit No. 4.

21 HEARING OFFICER: Okay.

22 MS. GRAHAM: No objection.

23 HEARING OFFICER: No objection.

24 (Appellee Exhibit No. 4 received in
25 evidence.)

1 Q So, Ms. Lee, what was that application
2 for?

3 A I'm just going to read off of the
4 exhibit. It is for miscellaneous activities in
5 wetlands, and then I'm going to scroll, yes, scroll
6 to the -- it's Page 4 to the type of work proposed.
7 So it was selected. Mr. Juren selected 25-foot-wide
8 swim access tied to open water, vegetation,
9 removal of wetland vegetation. And then he also
10 selected vegetation maintenance, trimming and
11 mowing. However, we did not authorize for mowing
12 within the wetland area.

13 Q When did you receive the application?

14 A So I'm just going to defer to reading
15 this. We received it on September 23rd, 2022.

16 Q And did the proposed activities in the
17 application fall under the EPC wetland rule?

18 A Yes. It fell under miscellaneous
19 activities and wetlands with a 25-foot swim and open
20 water access area and then also nuisance vegetation
21 treatment.

22 Q So can you tell the hearing officer what
23 you do or what you did when you received the
24 application? What's the process?

25 A So when I received the application, I

1 completed a final history review where I complete a
2 final worksheet. So I collect all the information
3 about the project site and also any history of the
4 folio number. I also review aerial imagery of the
5 property and also any site photos that we have
6 already in my file.

7 Q Okay. So, Ms. Lee, are you familiar
8 with -- it's already introduced into evidence as
9 Joint Exhibit 2 -- the permit, the MAIW? Did you
10 prepare that document?

11 A Yes, I did.

12 Q Was it signed by the authorized party on
13 behalf of the executive director?

14 A Yes.

15 Q So moving back to the application, can we
16 go through a couple of the steps of the application?
17 How does the application come to you?

18 A So it is assigned to me by either my
19 supervisor or manager that is processing it for
20 intake.

21 Q What is the first thing you do with
22 regards to the application?

23 A So beyond what I've already previously
24 mentioned, we also determine if this wetland area
25 doesn't have prior history on it, we want to ensure

1 that is actually jurisdictional to an EPC. So, for
2 this process specifically, I reviewed the SWFWMD
3 plans and also EPC construction plans, to ensure
4 that the wetland was jurisdictional with us, which
5 it is. And if it wasn't jurisdictional, then a
6 permit wouldn't be required. So I'd like to go back
7 a bit. It was determined that the wetland was
8 jurisdictional because it was labeled as a wetland
9 conservation area.

10 Q Is that the only reason the SWFWMD plans
11 are in the file?

12 A Yes.

13 Q Okay. Just real quick, can you explain
14 what a wetland is or other surface water?

15 A Yes. So a wetland is an area that is
16 frequently or permanently inundated or saturated
17 with water for a period of time. It has
18 characteristics of vegetation that is predominantly
19 found in wetland, hydric soils and other hydrologic
20 indicators. So you also mentioned other surface
21 waters. So other surface waters can also be
22 concerned wetlands, but they may have different
23 characteristics like 4 to 1 sloping where they're
24 artificially created.

25 Q So, Ms. Lee, did you go to the site?

1 Have you been there?

2 A Yes, I have.

3 Q When did you go to the site?

4 A I went on site August 18th, 2022.

5 Q What did you do when you were on site?

6 A So I conducted my site inspection. I was
7 actually accompanied by Mr. Greco. We walked the
8 entire wetland where I had permission to walk, and I
9 took site photos and notes.

10 Q Okay. So how do you determine whether
11 the proposed impact can be approved?

12 A Sorry. Could you repeat that?

13 Q Yes. During the application process, how
14 do you determine -- and maybe I can break this up.
15 How do you determine whether or not the impact can
16 be approved? What kind of things are you looking
17 at?

18 A Yes. So we review the applications
19 against the rule. So 1-11.09, 1-11.10 and BOR
20 5.2.1, 5.2.2, and if it's determined to have nominal
21 consequence to the wetland and it has minimized
22 impacts to the various extent possible, then it
23 would be considered for approval.

24 Q Did you do a cumulative impact study for
25 this application?

1 A So, no, I didn't do an in-depth
2 cumulative impact. However, I mean, I did one, I
3 guess, when I do my site visit, I take site notes,
4 and I just determined like against the rule. So the
5 cumulative impacts, it doesn't necessarily apply to
6 this type of activity because we encourage nuisance
7 vegetation removal, and then we also require
8 replanting in the area.

9 So, in addition, the 25-foot swim and
10 open water access area is provided in the rule to
11 all property owners, yes, so --

12 Q All right. So what specific wetland
13 vegetation is proposed for impact outside the swim
14 and open water access area?

15 A So I'm going to look at the permit for
16 this one. It would be a -- I'm not sure which
17 exhibit.

18 Q It's Joint Exhibit 2.

19 A So Exhibit 2 is the permit?

20 Q Yes.

21 A Okay. So I'm just going to read off of
22 that. We listed -- or I listed vines, torpedo
23 grass, Peruvian primrose, willow, dogfennel and
24 Cuban bulrush.

25 Q Are those nuisance species at the site?

1 A Yes, they are identified as nuisance
2 species.

3 Q Did you, in fact, verify that those
4 species were on site?

5 A Yes, I did.

6 Q And you had mentioned previously that
7 there was replanting. Do you have a condition in
8 the permit for replanting?

9 A Yes, yes. We have conditions in the
10 permit for replanting.

11 Q Why do you do that?

12 A So we encourage or require replanting to
13 ensure erosion control and also to ensure that
14 native vegetation does revegetate in the area.

15 Q Going to the permit, in the very first
16 section, it talks about 1-11.09. What is the
17 significance of that language, 1-11.09?

18 A So those are just the eligible activities
19 under the MAIW, but also the rules require that the
20 EPC ensures the activities are of normal consequence
21 and are minimized to the greatest extent possible.

22 Q And so what conditions do you put in the
23 permit to ensure that?

24 A So there are lots of conditions, but I
25 could either read them or list them out.

1 Q Everybody has a copy of the permit. It's
2 Joint Exhibit 2. Why don't you just identify the
3 conditions by number?

4 A Okay. So specifically we could say that
5 Condition 1, 4, 5, 6, 7, those are predominantly,
6 like the replanting conditions, 8, but 9, 10, 11,
7 12, 13, 14, 15, 16, 17, 18, 19, 21.

8 Q How do you address minimization for the
9 swim and open water access portion of the permit?

10 A So, yes, for the minimization, it does
11 not necessarily find for the 25-foot swim and open
12 water access area because the rules don't dictate
13 the size beyond like seeing whether it should be
14 less than 25 or not, in that sense.

15 But we do ensure that the swim and open
16 water access area is in an appropriate location as
17 in, that there's not a lot of native vegetation or
18 trees being impacted.

19 Q Specifically on Mr. Juren's property, is
20 it located in the best location?

21 A I would say so only because the shoreline
22 is pretty uniform, yes.

23 Q With respect to the nuisance removal
24 portion of the permit, can you identify some of the
25 conditions that you added for minimization in

1 ensuring the least environmentally adverse impact
2 for Mr. Juren's activities?

3 A Yes. So it's pretty similar to what I've
4 previously mentioned, but Condition 1 or -- I mean
5 5 through 8 are the replanting requirements, 9, 10,
6 11, 12, 13, 14 and 15, 16, 17, 18, 19 and 21.

7 Q Okay. And in reviewing the application,
8 did you ensure that the activity meets all of
9 1-11.10(3) including -- all of the rule including
10 Subsection 3?

11 A Sorry. Can you repeat that?

12 Q Yes. You can look at the rule.

13 A Sorry. Which section?

14 Q Section 3 of 1-11.10.

15 A Okay. Yes. Sorry, repeat the question.

16 Q Yes. Did you ensure that the application
17 submitted by Mr. Juren in the permit addresses all
18 of Section 1-11.10 including the Subsection (3)?

19 A Yes, I did, I ensured that.

20 Q Actually just for the record, can you
21 read -- I'm not sure how long it is. Yes. Can you
22 read? Just go ahead and read for the record
23 Subsection 3.

24 A All right. So Subsection 3, just to
25 double-check, it starts with, "Conditions and

1 limitations applicable"?

2 Q Yes, correct.

3 A Okay. So, yes, "Conditions and
4 limitations applicable to all above activities:" So
5 Sub(a) "These activities do not apply to wetlands or
6 other surface waters that serve as significant
7 habitat such as roosting, nesting or denning areas,
8 for state listed threatened or endangered species.

9 "(b) Although not required as part of an
10 application for impacts, these activities shall not
11 cause offsite adverse impacts, including flooding,
12 or otherwise affect the local hydrology so as to
13 adversely affect other wetlands.

14 "© These activities shall include best
15 management practices for erosion, turbidity and
16 other pollution control to prevent violation of
17 state or Commission water quality standards.

18 And the last, "(d), Activities authorized
19 under this section do not imply exemption from
20 obtaining all proper permits or complying with
21 regulations of other federal, state or local
22 agencies."

23 Q All right. Just to confirm because I
24 don't exactly remember how I asked the question.
25 Mr. Juren's application in the permit satisfied that

1 rule. Correct?

2 A Yes, it did.

3 Q All right. Ms. Lee, do you look at how
4 the activities are conducted or the method used for
5 a nuisance removal in creation of swim and open
6 water access?

7 A Yes, we do require that the applicant
8 provide us with the treatment methods.

9 Q Why?

10 A So we want to ensure that we are using
11 the proper conditions in the permit to help
12 facilitate the applicant in doing the less adverse
13 impacts.

14 Q And specifically what does the permit
15 allow in this particular instance for the method of
16 control?

17 A Yes. So the applicant has listed hand
18 removal, hand tools and herbicide as their treatment
19 method.

20 Q Based on those three methods that were
21 proposed and are included in the permit, can you
22 identify the conditions that address those methods?

23 A Yes. So essentially, I believe all --
24 let me get to it. But for some of the methods, I
25 believe -- before I get to the herbicide conditions,

1 we do have -- Condition 11 just states removal
2 should be conservative around native vegetation.
3 But for herbicides specifically, we do have
4 Conditions 14 and 15.

5 Q Okay. Do you have specific conditions
6 addressed just for how to conduct the herbicide
7 treatment in this application?

8 A Yes. So Condition 14 is specific to the
9 herbicide treatment.

10 Q I believe Ms. Clock may have already
11 testified. But I'd like you to, in this particular
12 -- in Mr. Juren's permit, can you read Condition 14?

13 A Yes. So Condition 14 states, "All
14 herbicides proposed for use must be approved for use
15 in aquatic systems by the Environmental Protection
16 Agency, EPA, and must be applied in accordance with
17 the label directions.

18 "If herbicides are proposed for use in
19 removing nuisance species, care must be taken so
20 that only the target nuisance species are treated.
21 If needed, non-nuisance species are removed or
22 destroyed by this treatment, replanting of these
23 species will be required in addition to the
24 replanting required in this permit.

25 "Any replanting of unauthorized native

1 non-nuisance species that were removed must be
2 completed within 30 days of the unauthorized
3 construction or removal or within 30 days of written
4 request of the EPC. Other conditions may be
5 requested to ensure replanting success."

6 Q So was that condition included to ensure
7 that the activity caused the least environmentally
8 adverse impacts?

9 A Yes.

10 Q Quickly over on Condition 15, what's the
11 purpose of Condition 15?

12 A So the condition in the permit is
13 concerning with noticing related to potential use of
14 the water by neighboring properties in which that it
15 might be included in the herbicide labeling
16 instructions. So by requiring the applicant to
17 follow the labeling instructions for water use
18 restrictions, the permit provides reasonable
19 assurance that the herbicide treatment -- that the
20 activity will cause the least environmentally
21 impact, adverse impact.

22 Q Okay. Changing subject a little bit,
23 let's discuss off-site impacts. Are you concerned
24 about off-site impacts when you review the
25 application?

1 A I mean, there's always the possibility of
2 off-site impacts due to like we're not sure if the
3 applicant or the person that's conducting the impact
4 might go beyond the boundary of the site. But
5 that's also possible with any of the other methods,
6 with the mechanical or hand tools or hand removal or
7 even the herbicide treatment.

8 Q So do you add a condition in the permit
9 for that?

10 A Yes. So let me look. So Condition 18,
11 and I believe 19 does apply a bit as well.

12 Q Really what is the purpose of Condition
13 18? What is that ensuring?

14 A Great. So it's ensuring that the
15 applicant or the permittee is staying within their
16 property boundaries.

17 Q And if the activity extends beyond their
18 property boundaries, what happens?

19 A That would be considered a violation of
20 the permit conditions. So, as I mentioned, we would
21 hope someone would report this to us, and it would
22 be a violation and defer to our compliance section.

23 Q Are there any other specific conditions
24 that you rely on that are intended to prevent
25 off-site impacts to the herbicides beyond the

1 project boundary?

2 A So, again, we just rely on the
3 EPA-approved requirements which are approved for
4 aquatic systems and we're to ensure that they're
5 following the EPA-approved labeling instructions.
6 That's essentially what we rely on or I rely on.

7 Q And who, in your opinion, is the expert
8 in the movement of herbicides in aquatic systems?

9 A So the EPA.

10 Q Does the EPC ever dictate to an applicant
11 what type of treatment method can be approved?

12 A So not in my three years here.

13 Q So just generally, I think you've already
14 maybe answered this, but in reviewing the
15 application, can you tell the hearing officer which
16 specific EPC rules you reviewed and conducted for
17 purposes of drafting the permit in this matter?

18 A Yes, Chapter 1-11, the wetland rule, and
19 also the Basis of Review, Sections 5.2.1 and 5.2.2.

20 Q In your expert opinion and to a
21 reasonable degree of certainty, does the permit,
22 Joint Exhibit 2, along with the conditions in the
23 permit provide reasonable assurance that herbicide
24 treatment is minimized and will be conducted in a
25 manner that causes the least environmentally adverse

1 impacts?

2 A Yes.

3 Q In your expert opinion and to reasonable
4 degree of certainty, does the permit along with the
5 conditions in the permit for the nuisance vegetation
6 control and the swim and open water access
7 activities provide reasonable assurance that the
8 activity will comply with the commission rules
9 including Chapter 1-11 and the Basis of Review?

10 A Yes.

11 MR. ZODROW: No further questions.

12 HEARING OFFICER: Mr. Juren, do you have
13 any questions of this witness?

14 MR. JUREN: Yes, do I go?

15 HEARING OFFICER: Yes. This side should
16 all go together.

17 MR. JUREN: Thank you.

18 CROSS-EXAMINATION

19 BY MR. JUREN:

20 Q Ms. Lee, this is Mr. Juren. I don't know
21 if you can see me on camera. I have a couple of
22 quick questions for you. No. 1, thank you for the
23 activity that you went through. I appreciate you
24 being here today even though you don't feel well. I
25 hope you get to feeling better.

1 Did you have numerous conversations with
2 me specifically concerning the permit during the
3 permitting process?

4 A Yes. We spoke a lot throughout the whole
5 permitting process, and, as I mentioned before, we
6 even spoke to prior to you applying for the
7 application as well.

8 Q Yes. And part of those conversations,
9 were they specifically concerning the replanting of
10 native vegetation?

11 A Yes.

12 Q And during those conversations, you
13 actually increased the number of native plants that
14 I had to put back on the property based on the
15 permit. Is that correct?

16 A Yes, that is correct.

17 MR. JUREN: Thank you very much.

18 HEARING OFFICER: Your witness, Ms.

19 Graham.

20 CROSS-EXAMINATION

21 BY MS. GRAHAM:

22 Q Good morning, Ms. Lee. You're still
23 doing okay? Can you hear me okay?

24 A Yes.

25 Q Okay. So you have visited this site

1 before. Is that correct?

2 A That is correct.

3 Q Who was with you when you visited?

4 A I was accompanied with Mr. Greco.

5 Q Why was Mr. Greco with you?

6 A Right. So prior to Mr. Juren's
7 application, Mr. Greco applied for shoreline
8 treatment for a vast majority of the properties on
9 the lake, so that's what the initial site visit was
10 for.

11 Q Is there still an application out there
12 for the vast majority of the lake from Mr. Greco?

13 A No. Mr. Greco was advised to withdraw
14 that application.

15 Q And is it EPC's position that the
16 individual property owners need to apply separately?

17 A That is correct, especially for these
18 latest activities in wetlands applications.

19 Q And based on your previous conversations,
20 is it your -- is it your understanding that there
21 will be more permits that will be applied for on
22 this pond?

23 A Yes. Mr. Juren has mentioned that other
24 properties will be applying.

25 Q Did they say roughly how many?

1 A I do not know the number.

2 Q Okay. In making your determination for
3 this permit, did you take the possibility of future
4 permits into account and cumulative impacts?

5 A I did not take that into account, no.

6 Q Okay. You have previously cited the
7 section of, I believe, 1-11.10 about list of
8 species. How do you determine if they're listed
9 species on site?

10 A Yes. So it's determined if I observe it
11 on site.

12 Q When did you visit the site?

13 A I visited in August 18, 2022.

14 Q Was that the only time you visited that
15 site?

16 A Yes.

17 Q Is that during nesting season of any of
18 the listed species?

19 A I do not know.

20 Q Would you find that relevant to 1-11.10
21 (3)(a), which is these activities do not apply to
22 wetlands or other surface waters that serve as
23 significant habitat such as roosting, nesting or
24 denning areas for state listed threatened or
25 endangered species?

1 A I'm sorry. I do not understand the
2 question. Could you rephrase that?

3 Q If you were trying to figure out whether
4 or not there were roosting or nesting activities, do
5 you think that observing it once during a time that
6 is not during these nesting seasons is adequate?

7 A I went through the proper process
8 according to our SOPs. I was not trained on
9 determining when nesting seasons are and to do
10 multiple inspections to ensure nesting season,
11 that's not a part of our processes.

12 Q What do your SOPs say about this?

13 A When to conduct our site visit, if we
14 observed significant habitats, then to I guess just
15 proceed accordingly.

16 Q And so once is enough based on your
17 understanding?

18 A For the purposes of that specific rule,
19 subset, I do not -- I would have -- I don't know,
20 that's, yes, again, it's not a part of our SOPs
21 whether to go out multiple times.

22 Q In your deposition, you had testified
23 that you did not look at the forested wetland area
24 beyond the lake. Is that correct?

25 A That is correct.

1 Q You didn't consider the proximity of this
2 specific lake or pond to significant wildlife
3 habitat as designated by Hillsborough County.

4 Right?

5 A I did not research that, no.

6 Q You didn't consider that there's a
7 stormwater structure in the pond that drains into
8 the Alafia River. Is that correct?

9 A I did not observe that on site or
10 research that.

11 Q You were not aware of where Bell Creek
12 was, right, when you went to the site?

13 A Correct.

14 Q And it had no impact on your analysis
15 whatsoever in this permit?

16 A I did not research that.

17 Q You had testified that you did not
18 consider cumulative impacts during your deposition.
19 Do you still agree with that?

20 A So during my deposition, I was under the
21 assumption or the thought process where a cumulative
22 impact analysis was this like official report that
23 we have to put together and all this stuff. But I
24 was reminded by my supervisor that we do essentially
25 do -- for nuisance vegetation removal, we kind of --

1 we do like a subconscious or like an informal
2 cumulative impact analysis, I guess --

3 Q Sorry? Did you say subconscious
4 analysis?

5 A -- where we'll ensure that the nuisance
6 vegetation is present. And then we also replant --
7 require replanting. As far as a cumulative impact
8 analysis, no, we don't do -- I didn't do an official
9 report or anything like that, and that's what I
10 stated in my deposition.

11 Q Just now in your testimony, you said
12 cumulative doesn't apply to this activity?

13 A Not an in-depth one, no.

14 Q I would like to show you a document which
15 we had actually entered during the deposition as an
16 exhibit. It's file worksheet for Review No. 75762.
17 I apologize, I only have one copy of it. I can put
18 it on line if that would be helpful.

19 A 75762, I have a copy of one.

20 MR. ZODROW: Let me see it. Can I ask
21 what that is because I have a list of
22 electronic? What is that listed as an exhibit?

23 MS. GRAHAM: This is a rebuttal exhibit.

24 MR. ZODROW: Okay. Sorry.

25 MS. GRAHAM: So this is not actually,

1 yes.

2 Q So are you familiar with the document
3 that I'm referring to, Ms. Lee?

4 A Yes.

5 Q Okay. And so in this document, there's a
6 whole section about project history and compliance.

7 A Yes, yes, sorry.

8 Q I just want to confirm. So there has
9 actually been -- it appears that there had been
10 several complaints on this property before. Is that
11 correct?

12 A That is correct.

13 Q And they were for unpermitted spraying?

14 A Sorry. What was the last thing you
15 asked?

16 Q They were for unpermitted herbicide use.
17 Is that correct?

18 A I wouldn't say unpermitted herbicide use.
19 They were for unauthorized vegetation control.

20 Q Okay. And you had spoken with Mr. Inch
21 about these complaints. Is that correct?

22 A That is correct.

23 Q Then you had previously testified in your
24 deposition that in the conversation, I asked what
25 type of vegetation had been removed, and you said,

1 "I do not recall us discussing the specifics of
2 that." Is that still correct, you don't recall?

3 A That is still correct.

4 Q And then I had asked, how had it been
5 removed, and you said, "I do not know." And then
6 but it was relevant that you contacted Mr. Inch to
7 understand the history of it, and you said correct.
8 Is that correct?

9 A Yes, that is correct.

10 Q So you don't know whether or not there
11 had been herbicide spraying that had occurred on
12 this site previously? You know that there had been
13 removal, but you don't know for sure what type of
14 removal had occurred. Is that correct?

15 A So I don't -- what was previously asked
16 was whether or not Mr. Inch and I spoke about the
17 type of removal. However, I spoke with Mr. Greco
18 and he has mentioned that herbicide use was used.
19 And I believe Mr. Anderson spoke with me plenty
20 times as well about that, too, and Mr. Juren.

21 Q Did you think it was relevant to find out
22 any more details about the quantity of herbicide
23 that had been applied?

24 A So that is information that is not
25 required to know per our review.

1 Q You didn't think it was relevant to look
2 at whether or not the history of unpermitted sprays
3 on this site might have contributed to
4 bioaccumulation of herbicides that would otherwise
5 not be there?

6 A So, again, that's not something per our
7 rule or SOPs that are required to be reviewed.

8 Q So you had this information, bottom line,
9 but you didn't think it was relevant to follow up as
10 far as what it might mean for the environmental
11 conditions on site?

12 A So I just want to say that you keep
13 stating or using the word "relevant." And I don't
14 think that's an appropriate term. I conducted my
15 review per our rules and SOPs. Whether it's
16 relevant or not is beyond, I guess -- I don't know.
17 That's more of like an opinion like relevant --
18 about relevant. It's per our rules or SOPs. That's
19 how I conducted this review.

20 Q It didn't figure in to your analysis
21 basically?

22 A So I reviewed this application and
23 permitting process per our rules and SOPs.

24 Q In the permit, you list a number of
25 plants, and one of them are vines. Is there a

1 reason why you didn't identify specifically what
2 type of vine it was?

3 A Yes. So vines, any vines could be
4 determined a nuisance. So per my on-the-job
5 training, I was informed to kind of cluster them all
6 together as vines. They are nuisance, and that's
7 why it's listed as such.

8 MS. GRAHAM: And I want to back up, just
9 a little housekeeping. I would like to enter
10 this file worksheet into evidence at this
11 point. It will be Rebuttal Exhibit 1.

12 MR. ZODROW: I have no objection, Your
13 Honor.

14 HEARING OFFICER: Okay. I will label
15 that as Appellant's exhibit. What number are
16 we on here?

17 MS. GRAHAM: No. 1.

18 HEARING OFFICER: No. 1. Okay.
19 Appellant's Exhibit No. 1.

20 MR. ZODROW: I have no objection beyond
21 relevance. But for purposes of the exhibit,
22 it's fine.

23 HEARING OFFICER: So moved -- entered.

24 MS. GRAHAM: Thank you.

25 (Appellant's Exhibit No. 1 received

1 in evidence.)

2 Q Ms. Lee, are there any herbicides that
3 you would consider inappropriate for use in a
4 wetland?

5 A Sorry to throw this to you. Of course,
6 EPA-approved herbicides for aquatic systems, that's
7 beyond my expertise.

8 Q So let's go back to the permit under the
9 different conditions. There's Condition No. 14
10 where it says, "All herbicides proposed for use must
11 be approved for use in aquatic systems by the
12 Environmental Protection Agency and must be applied
13 in accordance with the label directions." How do
14 you enforce this condition?

15 A We're given reasonable assurance to
16 applicants that they are going to follow the label
17 instructions. Again, if they go beyond their
18 project site or if they have any sorts of violations
19 to these conditions, they would be in violation of
20 it and that would defer to our compliance section.

21 Q So what you're saying is, you don't know
22 there's a problem until someone reports a problem?

23 A Essentially we don't have eyes on the
24 entire county of every single application that we
25 approve, so we rely on applicants to follow our

1 conditions. And then of course we rely on citizens
2 of the county to report anything that may be a
3 violation.

4 Q So this condition is part of an EPC
5 issued permit. Is that correct?

6 A Yes, it's a part of the EPC permit.

7 Q And it is EPC who does enforce their
8 permit. Is that correct?

9 A That is correct.

10 Q Under Condition No. 15, which states,
11 "The applicant shall make a reasonable effort to
12 notify potential users of the treated waters listing
13 the types of herbicides and length of any use
14 restrictions imposed by the label," what does
15 "reasonable effort" mean?

16 A That they would make a -- sorry, I was
17 just going to say reasonable effort. They would try
18 to notify their other potential users. So
19 specifically Mr. Juren e-mailed about Mr. Anderson
20 about the herbicide use, so that is definitely a
21 reasonable effort. We've also -- in the same
22 condition, it states to -- they could distribute the
23 permit to residents or signs posted at access points
24 near the authorized area.

25 Q So you've approved 100 or more of these

1 MAIW permits. Is that correct?

2 A That is correct.

3 Q Have you ever seen Conditions 14 or 15
4 enforced?

5 A I'm sorry. I don't understand your
6 question.

7 Q Let me rephrase it. Have you ever seen
8 conditions violated by someone who's been granted a
9 permit?

10 A So Conditions 14 and 15 specifically as
11 in -- I mean, no, I haven't seen an issue where I
12 issued a permit that had herbicide treatment on
13 there, and then specific -- like compliance
14 specifically states, "Oh. This is a violation to
15 Herbicide Conditions 14 and 15." I've never seen
16 that. And I don't think we really report that.
17 Like that's beyond my, I guess, job duties to know
18 specifically which conditions were in violation.

19 Q You reviewed some aerial imagery as part
20 of issuing this permit. Is that correct?

21 A That's correct.

22 Q And in your deposition, you had testified
23 that you had looked at the open-water area, that was
24 the focus of your analysis. Right?

25 A That is correct. I looked at the open-

1 water area because that is the project area for this
2 permit.

3 Q And you didn't consider the forested area
4 on Mr. Juren's property that was behind the open-
5 water area?

6 A No, I did not review the forested wetland
7 area.

8 HEARING OFFICER: Would someone like to
9 tell me which one is Mr. Juren's property?

10 MR. ZODROW: I was going to ask him those
11 questions. Can I?

12 MS. GRAHAM: I mean, yes, if you want to,
13 yes.

14 MR. JUREN: Do you want me to point it
15 out? I'll be glad to. It's easier since it's
16 right next to you. This property right here is
17 my property. This property over here is Mr.
18 Anderson's property, and this is Mr. Greco's
19 property, since you heard his name mentioned.

20 HEARING OFFICER: Okay. Thank you.

21 MR. JUREN: You're more than welcome.

22 MS. GRAHAM: Ms. Lee, I have no further
23 questions. Thank you very much, and I hope
24 that you feel better.

25 THE WITNESS: Thank you.

1 MR. ZODROW: I do have a couple follow-up
2 questions to that, Ms. Lee.

3 REDIRECT EXAMINATION

4 BY MR. ZODROW:

5 Q Do you have in front of you 1-11.09?

6 A Yes.

7 Q Can you look at 1-11.09, Subsection (2)
8 and read that into the record?

9 A Subsection (2) states, "Consideration
10 shall be made of cumulative impacts of proposed
11 development to the wetland system in combination
12 with other developments which have been or may be
13 proposed in the same drainage basin."

14 Q Ms. Lee, what is the proposed development
15 that's been authorized in the permit?

16 A Um, so I wouldn't say that it was
17 necessarily called development. It's just like a
18 nuisance vegetation rule and impact. I look at how
19 I interpret development, it's like construction of
20 something.

21 Q Well, I won't go into 1-11.09(2). What
22 is in the proposed activity, the proposed
23 development that's authorized?

24 A It is nuisance vegetation removal --

25 MS. GRAHAM: I'd like to object to

1 leading the witness.

2 THE WITNESS: -- in the 25-foot swim and
3 open water access.

4 MR. ZODROW: I just asked her what it is.

5 Q Say that again for the record.

6 A It is nuisance vegetation removal in the
7 25-foot swim and open water access area.

8 Q Okay. Did you do a review of the
9 nuisance removal in the swim and open water access
10 in the wetland in combination with other nuisance
11 removal and swim and open water access which have
12 been or may be proposed in the same drainage basin?

13 A I'm sorry? Can you repeat that?

14 Q Did you consider the proposed nuisance
15 removal and creation of the swim and open water
16 access in combination with other nuisance removals
17 and swim and open water access in the same drainage
18 basin?

19 A No, I did not consider that.

20 Q Why not?

21 A The applications weren't applied for and,
22 again, that's not a part of our SOPs for nuisance
23 vegetation removal. I mean, nuisance vegetation
24 removal is encouraged by us and, as Dessa mentioned,
25 it is a free application, so it's definitely

1 encouraged. And I am requiring replanting of native
2 vegetation, so this would be -- I believe this is --
3 or I know this is going to be a benefit to the
4 wetland in the end.

5 Q Ms. Lee, can you identify anywhere in the
6 EPC rules where we consider the compliance history
7 of the applicant?

8 A I could not identify that for you, no.

9 Q And one last question. In the event
10 there was a compliance case, hypothetically maybe a
11 bunch of cattails were killed or some vegetation was
12 killed, maybe off site or maybe a native vegetation
13 was destroyed, do you handle the compliance of that?

14 A No, I don't handle the compliance. That
15 is a different section from where I work.

16 Q Would you even necessarily know for sure
17 if that happened in one of your permits?

18 A Sorry. Can you rephrase that?

19 Q Would you necessarily even know if that
20 happened in one of your permitted sites? If it
21 happened maybe a year later, would you necessarily
22 even know if there was a compliance case on one of
23 your permits?

24 A I would only know based off of if it was
25 inserted into a compliance database, I mean --

1 Q But you wouldn't be the one who would go
2 out and inspect it or do the resolution or handle a
3 compliance case?

4 A No. With our compliance section that
5 does the investigations, I only know what's inserted
6 in the database, and I put that in the file
7 worksheet. I may meet with the compliance
8 investigator, but I am not on site during those
9 investigations.

10 MR. ZODROW: I have no further questions.

11 HEARING OFFICER: Do you have one more
12 question?

13 MR. JUREN: I have two.

14 HEARING OFFICER: Two, yes.

15 CROSS-EXAMINATION

16 BY MR. JUREN:

17 Q Ms. Lee, we'll try to get you off of here
18 fast. I know you're not feeling well. I hope you
19 get to feeling better. But in this case or in your
20 position here, if hypothetically I did something
21 under this permit that went beyond the permit and
22 was a violation and Mr. Anderson contacted the EPC,
23 he would be contacting the compliance portion of the
24 EPC, correct, like Mr. Inch or someone in that role.
25 Is that correct?

1 A That is correct. Mr. Anderson can report
2 things to me, but I will forward that to the
3 compliance section.

4 Q But in reality, a complaint goes to the
5 compliance section. Is that correct?

6 A That is correct.

7 Q So you don't necessarily -- are not
8 notified? You can research it in a database, but
9 you would have to actively go find it. Is that
10 correct?

11 A That is correct.

12 Q In your experience working with both
13 myself, Mr. Greco, Mr. Anderson, is there any doubt
14 in your mind that if I were to violate the
15 requirements of this permit, that Mr. Anderson would
16 make the EPC aware of this?

17 A No. There's no doubt in my mind.

18 MS. GRAHAM: I object. It's speculative.

19 MR. JUREN: Can I continue? I think in
20 this case, this is a proven fact. He's made
21 numerous complaints. I don't think there's an
22 issue about whether or not he would inform the
23 EPC of the violation.

24 HEARING OFFICER: You know, I'll give it
25 the weight that I think it deserves, I mean --

1 MR. JUREN: No further questions. Thank
2 you.

3 HEARING OFFICER: Thank you. Before you
4 finish, Mr. Zodrow, I don't recall -- so
5 Exhibit 1-A through H and Exhibit 2 were part
6 of the joint prehearing stipulation, so they
7 were already entered into the record. The two
8 resumes, I don't recall you entering the two
9 resumes into the record, nor did you enter the
10 aerial photograph into the record. You did
11 enter Exhibit 6.

12 MR. ZODROW: The resumes, I thought,
13 were --

14 HEARING OFFICER: Part of the prehearing
15 stip?

16 MR. ZODROW: Well, no. I thought I
17 introduced them during the testimony.

18 HEARING OFFICER: You introduced them,
19 but I don't recall we going through the
20 entering them into the record.

21 MR. ZODROW: Oh. They weren't entered
22 into evidence?

23 HEARING OFFICER: Yes. I'm just trying
24 to make the record clear for me.

25 MS. GRAHAM: I have no objection to you

1 submitting them in.

2 MR. ZODROW: So, yes, the exhibits --
3 Appellee Exhibits 1 and 2 would be moved into
4 evidence in the case.

5 HEARING OFFICER: Hearing no objection.
6 Okay.

7 (Appellee Exhibits 1 and 2 received in
8 evidence.)

9 MR. ZODROW: Exhibit No. 3, the aerial,
10 I'm going to have Mr. Juren. Maybe we could do
11 a few more questions for Mr. Juren and break at
12 that point. I won't be very long with him,
13 just a couple of questions. And I'll introduce
14 Exhibit 3, the aerial, at that point.

15 HEARING OFFICER: Okay. That's good.

16 MR. ZODROW: So I have no further
17 questions for Chantelle. Does anybody else?
18 Maybe she can go get some rest. Do we need
19 her?

20 MS. GRAHAM: No.

21 MR. ZODROW: Are you done? Okay.

22 MS. LEE: I going to listen in, but I'm
23 just going to turn my camera off.

24 MR. ZODROW: Yes. Turn it off, mute
25 yourself. Thank you, everybody.

1 HEARING OFFICER: Thank you, Ms. Lee.
2 All right. It's Mr. Juren's turn unless you
3 want to ask questions of Mr. Juren.

4 MR. ZODROW: I have a couple of questions
5 for Mr. Juren and then I'll let him have the
6 opportunity. So, yes, you'll go up there and
7 we'll swear him in first.

8 * * * * *

9 JOEL BRENT JUREN,
10 having been duly sworn to tell the truth, the whole
11 truth, and nothing but the truth, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ZODROW:

15 Q Good morning. Fortunately it's still
16 morning, Mr. Juren. Can you start out and tell the
17 hearing officer your name and spell it for the
18 record?

19 A Joel Brent Juren. Last name J-u-r-e-n,
20 Joel, J-o-e-l, Brent, B-r-e-n-t.

21 Q Mr. Juren, can you tell the hearing
22 officer where you live, your address?

23 A Yes. I live at 10510 Sedgebrook Drive,
24 Riverview, Florida, 33569.

25 Q I just handed you a document. It's a

1 site aerial. Is your house -- do you recognize that
2 property?

3 A I do.

4 Q Those properties and the pond?

5 A Um-hum.

6 MR. ZODROW: I would like to introduce
7 that -- it's been previously provided to the
8 parties -- as Appellee's Exhibit No. 3, aerial
9 of the property.

10 MS. GRAHAM: No objection.

11 MR. ZODROW: Thank you.

12 (Appellee's Exhibit No. 3 received in
13 evidence.)

14 HEARING OFFICER: Just for my purposes,
15 would you just on my copy -- can I ask you just
16 to tell me which house it is?

17 MR. ZODROW: I was going to do that right
18 now, and we'll try to articulate it for the
19 court reporter. I'll have him describe it.

20 BY MR. ZODROW:

21 Q Mr. Juren, can you describe on that
22 aerial which house is yours and try to describe that
23 for purposes of the court reporter? Let me know
24 rather than just pointing.

25 A Certainly. If you were to look at this

1 photograph, you'll see a home with a lot of rocks in
2 the yard. It's very easy to find that house. That
3 is my neighbor's house.

4 Towards the center, if you go from there
5 towards the center of this photograph, the next
6 house there is my home. So my home is the one that
7 you see the pool cage jutting out the back of the
8 house but right next to the home with the rock yard.
9 Does that explain it sufficiently?

10 Q Mr. Juren, can you identify where the
11 appellant lives?

12 A Yes, I can. Going back to the rock yard
13 house, which is the easiest thing to identify,
14 Mr. Anderson lives on the other side of that
15 property. So there's the rock -- the home with the
16 rock yard is between my home and Mr. Anderson's
17 home.

18 Q And, Mr. Juren, can you explain what
19 you're proposing under the application? I know
20 we've had these discussions about nuisance, sir.
21 What is your goal? What are you really proposing
22 for yourself?

23 A I'm proposing to have the opportunity to
24 treat my property. I have a 75-foot frontage on the
25 pond from this particular property. I'm requesting

1 a 25-foot swim area. And the purpose of that swim
2 area, actually, is to allow me to fish with my
3 grandchildren that come over to the house quite
4 often.

5 Because we have had alligators and snakes
6 in the pond, I don't like approaching the edge of
7 the pond to fish when there may be a snake or an
8 alligator in the grass. So I would like to have an
9 open area where I can see that there's nothing there
10 before I approach it with them. And then I would
11 like to control the nuisance vegetation on my
12 property.

13 Q Why did you choose herbicides?

14 A I chose herbicides for several reasons.
15 But one of those reasons is, I will be turning
16 sixty-five in February, and I know how hot it is in
17 the summer here in Florida, having living here 20
18 years, and I have tried to maintain the pond in the
19 past manually. It is a very laborious task, very
20 hot, as I stated.

21 In order to treat the pond or to pull
22 nuisance vegetation out of the pond by hand, you
23 basically have to get into the pond. I had hip
24 waders and I had done that in the past, very
25 difficult. I was much younger then. That's why I

1 decided I no longer wanted to do some 17 years ago.

2 So I had determined that it is much
3 easier and more efficient to use herbicides,
4 targeted herbicides, selective herbicides against
5 the nuisance vegetation in the pond. I think that
6 it is more effective and it lasts longer.

7 When I did this by hand in the past, the
8 nuisance vegetation grew back very rapidly. It's
9 like grass in your yard. Anybody who lives here
10 knows that you may have to mow your grass every five
11 days to maintain your yard during the growing
12 season.

13 The nuisance vegetation in the pond is
14 very much like that. If you use a herbicide and it
15 kills the vegetation itself, that definitely does a
16 better job of maintaining your area free of the
17 nuisance vegetation.

18 Q Mr. Juren, did you initially want to
19 conduct more work on your site for vegetation
20 removal?

21 A Well, I would have liked to have had more
22 area cleared, yes, and that was part of the
23 discussions with Ms. Chantelle Lee. I was limited
24 to only 25 feet based on your requirements here at
25 the EPC. I would like to have had a much larger

1 area. I have 75 foot of frontage on the pond. I
2 would like to have more than a third of that. But,
3 based on your rules, I'm not allowed to.

4 Q Did Ms. Lee identify specific replanting
5 areas for you?

6 A Yes, over numerous conversations and
7 plots that I've provided back and forth with the
8 EPC, she highlighted how many native plants I would
9 have to replant and where those native plants would
10 have to go.

11 In fact, we had a significant discussion
12 about how many native plants had to be there because
13 I don't have that much area outside the free zone.
14 I've got to double up to get that many native plants
15 back into the zone. In other words, 50 feet, I'm
16 down to 50 feet, and there's a lot of native plants
17 that have to be replanted in that 50 feet.

18 Q And what's the length of your shoreline?

19 A I'm sorry?

20 Q What is the length, total length of your
21 shoreline?

22 A On my side of the home, it's 75, on my
23 side of the pond, it's 75 feet. On the other side
24 pond, as has been stated before, I own the property
25 across the pond that goes into the wooded area you

1 see on this photograph. I think my property goes
2 700 feet back, I'm not positive. But that is
3 smaller. I don't know the exact measurement of
4 that, but you can see it's less than 75 feet. But
5 I'm not planning to clear any of that for access,
6 obviously. You did not approve me for that side for
7 clearing.

8 Q Have you made attempts to our herbicide
9 applicators for work on your pond previously?

10 A Previously, yes, as has been highlighted
11 by Mr. Anderson's counsel, I have had a licensed
12 aquatic treatment company previously treat this
13 property or treat the pond actually in the past and
14 brought them on board to do that, and Mr. Anderson
15 was aware of that at that time.

16 Q Now, do you have issues trying to find a
17 licensed applicator to do the work at your property?

18 A I would say that that was very difficult.
19 It took me some time to find the gentleman, the
20 first gentleman that helped me with this, Jay. He
21 was Terra Aqua or Aqua Terra because this is not a
22 very large pond and because it's not a very large
23 pond, there's not a lot of money to be made by these
24 contractors and it takes time to come out there and
25 treat it.

1 So I did use Solitude Lake Solutions, I
2 think it is, or Lake Management, which is the
3 contract that I had provided to Mr. Andersen to
4 review before we brought them on to do that
5 treatment. And they also were willing to do it for
6 the whole pond.

7 I think that I'm going to have an issue,
8 to be honest with you, when I call up these folks
9 and say, "Will you come out and look at my 50
10 feet -- or 75 feet of area to treat on a recurring
11 basis." I think it's a problem here in Florida. If
12 you have a small activity, they just don't want to
13 take their time to work with you. It's not worth
14 their time as far as they're concerned.

15 Q All right. One second.

16 A Sure.

17 Q Just to follow up on the -- in the event
18 the permit didn't allow herbicide treatment, how
19 would that affect your goal on your pond ultimately?

20 A I don't think I would be able to enjoy
21 the pond to the level I'd like to with my family. I
22 just don't see how. It's just too much effort
23 manually take care of nuisance vegetation removal.
24 I've lived it and I recognize that.

25 If I could highlight since it was brought

1 up earlier about other potential permittee. I am
2 aware of at least two other potential permittee that
3 are in their eighties. I don't think the EPC would
4 want to require them to go out there and manually do
5 this and those individuals have a heart standing in
6 the pond. I think you need to think about that when
7 you're talking about what's authorized for people to
8 do on their own property for nuisance vegetation
9 removal.

10 MR. ZODROW: I have no further questions.

11 CROSS-EXAMINATION

12 BY MS. GRAHAM:

13 Q Good morning, Mr. Juren. Is it still
14 morning?

15 A We're getting close.

16 Q We're almost there. Good morning, Mr.
17 Juren. How are you?

18 A I'm doing great. Thank you.

19 Q So you just testified that you're not the
20 only person who lives by the pond who wants to
21 remove vegetation. Is that correct?

22 A That is true.

23 Q How many people do you know of who want
24 to remove vegetation?

25 A Well, I know of at least three more for

1 sure. That is correct.

2 Q Is it your understanding that they all
3 want to use herbicides?

4 A Yes.

5 Q Okay. Could you hire someone to manually
6 remove this?

7 A I think I just answered that. It is
8 possible, it's feasible. Whether or not I can
9 actually get someone to do it, that's a different
10 question for a 75-foot area. I mean, that's an
11 interesting question because if I offer somebody
12 \$10,000 to come and treat it, I'm sure I could find
13 somebody to treat it.

14 Can I find somebody who will treat it
15 within the funding allowance that I would provide
16 for that? That's a totally different question.

17 Q Originally it was your neighbor, Mr.
18 Greco, who contacted the EPC to have the pond-wide
19 permit. Is that right?

20 A That is correct.

21 Q What did EPC say? That it needs to be an
22 individual permit. Right?

23 A Yes.

24 Q Yes. But the intention was to spray the
25 whole pond?

1 A Well, the intention was to ensure that
2 the folks who were on the pond that wanted the
3 pond's nuisance vegetation controlled, to allow them
4 to do it in a single permit. That's what the intent
5 was.

6 Q Okay. So you had just testified you had
7 a contract with Solitude Lake Management to perform
8 nuisance vegetation services. Is that correct?

9 A That is correct.

10 Q I have a copy of the contract which had
11 been provided in your response to the request to
12 produce. May I present it to you and you
13 authenticate it?

14 A Okay. I can see now.

15 Q Mr. Juren, just one question on that --
16 well, actually two questions. What was the date of
17 that contract?

18 A Effective April 2020 through 31 March
19 2021.

20 Q You didn't have a permit for that when
21 you got that contract?

22 A I did not have a permit from the
23 Environmental Protection Committee, that is true.

24 Q What was the total cost of services?

25 A An annual contract was \$1,680.

1 Q Okay. Thank you very much.

2 MS. GRAHAM: I would like to enter that
3 into evidence right now. Any objection?

4 MR. ZODROW: Only as to relevance, but
5 beyond that, no objection.

6 HEARING OFFICER: Okay. Appellant's
7 Exhibit 2?

8 MS. GRAHAM: Yes.

9 (Appellant's Exhibit 2 received in
10 evidence.)

11 BY MS. GRAHAM:

12 Q Mr. Juren, you had also included some
13 safety data sheets of diquat 2L --

14 A Um-hum.

15 Q -- and what's called SePRO Sonar. Do you
16 recall?

17 A I do.

18 Q Okay. Now, I would like to bring this up
19 so I can enter this into evidence. This one is
20 actually Sonar A.S. Aquatic Services.

21 A Well, I'll look at it.

22 Q All right. There's this one.

23 A I'll have to be honest with you. I know
24 that I provided the data sheets that Solitude Lake
25 Management provided to me. That was a direct

1 request from Mr. Anderson, to see that before
2 agreeing to allow the contract to be put in place.
3 I didn't go in depth in reviewing each one of these.
4 I'm not a professional in this arena.

5 Q I understand.

6 A So I simply took what Solitude Lake
7 Management gave me. I forwarded it to Mr. Anderson
8 so he could review it to get his approval to sign
9 the contract.

10 Q I completely understand. But you
11 recognize these documents inasmuch as they had been
12 provided?

13 A Inasmuch as Sonar -- I remember seeing
14 Sonar and A.S. You should have what I provided you,
15 an e-mail that actually had these attached, each one
16 of these.

17 Q Yes.

18 A Then if these are the ones that are
19 attached to that document, yes.

20 Q Yes, sir.

21 A That's correct.

22 Q So can you read for me -- what is this
23 document? What does it say?

24 A It's a safety data sheet, New Farm
25 Chemical Product and company identification, Diquat

1 2L. What do you want me --

2 Q Can you read this section right here?

3 A Yes, I will. This is under Section 6,
4 "Accidental release measures," and it states,
5 "Environmental Precautions." Correct?

6 Q Yes.

7 A "Environmental Precautions, Prevent
8 material from entering public sewer systems or any
9 waterways. Do not flush to drain. Large spills to
10 soil or similar surfaces may necessitate removal of
11 topsoil. The affected area should be removed and
12 replaced with an appropriate container for
13 disposal."

14 MS. GRAHAM: Thank you very much. I
15 would like to enter these into evidence as
16 Composite Exhibit 3.

17 MR. ZODROW: Objection to relevance.
18 I'll leave it at that.

19 MS. GRAHAM: Okay.

20 MR. ZODROW: Can I follow up with my
21 objection as to why it's relevant?

22 HEARING OFFICER: Sure.

23 MS. GRAHAM: Yes. It's relevant because
24 it goes to the overall condition of the pond
25 and the possibility of bioaccumulation and

1 whether or not the history of unpermitted
2 spraying may have an impact and be relevant as
3 to whether further approved spraying should be
4 appropriate for this property, and our expert
5 will be testifying to that.

6 MR. ZODROW: All right. I still feel
7 it's irrelevant but I will let the hearing
8 officer decide.

9 HEARING OFFICER: I'm not going to enter
10 them in until I hear from your expert because
11 I'm not sure I understand the relevance at this
12 moment, myself.

13 MS. GRAHAM: Okay.

14 BY MS. GRAHAM:

15 Q You have previously conducted -- you just
16 had said that you had conducted unpermitted spraying
17 on the pond. Is that correct?

18 A That is correct.

19 Q And you don't know the exact herbicides
20 that had been used, but you were provided those
21 documents from Solitude?

22 A That is correct.

23 Q And this was actually the subject of not
24 one but two complaints that you had received about
25 unpermitted spraying -- unpermitted vegetation

1 removal on your property. Is that correct?

2 A I'm not sure if they were two separate
3 complaints. The complaint is about the same thing.
4 Mr. Anderson complained about the spraying on his
5 property, unpermitted spraying of the pond by EPC.
6 At the time, we were -- how can I state this?

7 At the time the spraying was occurring,
8 the property owners were aware that it was being
9 sprayed. This became an issue when Mr. Anderson no
10 longer wanted any herbicide spray on his property.

11 Q Mr. Juren, you have received a letter
12 from Mr. Inch on October 5th, 2021 titled complaint
13 investigation concerning unauthorized activities and
14 clearing wetland vegetation from within the wetland
15 conservation. Is that correct?

16 A That is correct.

17 MS. GRAHAM: I would like to enter this
18 into evidence.

19 MR. ZODROW: Can I see it?

20 MS. GRAHAM: Yes.

21 MR. ZODROW: Objection to relevance how
22 it fits within the rule. I don't know how it
23 is relevant to the case.

24 HEARING OFFICER: Are you going to make
25 this all clear as to relevance? I mean, it is

1 a public record, so I don't have a problem with
2 having it here as a public record for what it
3 says. But, again, are you going to tie this
4 all together somehow?

5 MS. GRAHAM: Yes, Officer. I'm going to
6 have testimony that explains that the fact that
7 there had been unpermitted spraying on site
8 raises questions as to the bioaccumulation of
9 herbicides within the pond and what it may mean
10 as far as impacts to the surrounding pond and
11 environment. Therefore it is relevant to
12 whether or not a subsequent approval of
13 herbicides on site is indeed the least
14 environmentally adverse impact.

15 HEARING OFFICER: This is what your
16 expert is going to talk about?

17 MS. GRAHAM: Yes.

18 HEARING OFFICER: All right. Let's hold
19 it until then. I'll label it Exhibit 4 for
20 reference.

21 MS. GRAHAM: Then just one last question,
22 Mr. Juren. And I know it's nearly lunchtime
23 and everyone is getting hungry.

24 Q You had said that there had been one
25 investigation, but you had been copied on an e-mail

1 from Mr. Clint Shockley on July 14, 2022, about
2 further activities, unauthorized activities, in the
3 surrounding pond -- in the pond. Is that correct?

4 A I'm not sure that that is a new activity.
5 And the reason I'm confused here is because I
6 thought it was about the same thing. Because once
7 Mr. Inch contacted me, I never took any more action
8 on the pond. So I don't know how there could be
9 another one against me on that pond except for the
10 same activity.

11 Once I received notification from
12 Mr. Inch, I took no more action on the pond because
13 he notified me that I should not take any more
14 action on the pond.

15 Q So the letter that you had previously
16 looked at --

17 A This, yes.

18 Q What's the date of that?

19 A This is October 5th.

20 Q What's the year?

21 A 2021.

22 Q Then I have another e-mail which I'd to
23 submit. And, again, this goes to the idea of the
24 current condition of the pond and so we will be
25 tying this together.

1 A Okay.

2 Q Is your e-mail in the "To:" section of
3 this?

4 A Yes, yes, that is correct.

5 Q What is the date of this e-mail?

6 A This is July 12th of 2022.

7 Q Who sent it?

8 A This was sent by Mr. Clint Shockley.

9 Q Could you please read it for the record?

10 A Okay. "Good afternoon, gentlemen: As
11 you are aware, EPC staff investigated the wetland
12 area pond behind your properties on Sedgebrook Drive
13 on July 12, 2022. Although no corrective actions
14 are required at this time, please be advised that
15 any future unauthorized activities within the
16 wetland areas adjacent to your properties could
17 result in an initiation of formal enforcement
18 proceedings.

19 "To that end, I would encourage you to
20 obtain a nuisance vegetation removal permit from EPC
21 prior to any vegetation maintenance events. Please
22 feel free to contact me with any questions or
23 concerns. Thank you for your cooperation in the
24 resolution of this matter. Clint Shockley,
25 environmental scientist."

1 Q Thank you very much.

2 A Can I ask a question? Oh, no.

3 Q No, I'm asking the questions.

4 THE WITNESS: I can't cross-examine
5 myself.

6 MR. ZODROW: I'm going to object again
7 for relevance.

8 HEARING OFFICER: This is going to be
9 labeled Appellant's Exhibit 5. It has not yet
10 been entered into the record.

11 Q Mr. Juren, just so that I'm clear, you're
12 not a hydrologist?

13 A Absolutely not.

14 Q You're not a botanist?

15 A I am not.

16 Q You rely on the expertise of the EPC to
17 do their job?

18 A That is correct.

19 MS. GRAHAM: No further questions.

20 THE WITNESS: Okay.

21 HEARING OFFICER: Mr. Juren, is there
22 anything else you would like to say at this
23 hearing on your behalf? You know, Mr. Zodrow
24 asked you questions, Ms. Graham asked you
25 questions. But you can make your own little

1 opening statement, whatever you want to say.

2 MR. JUREN: Thank you. I appreciate the
3 opportunity. Give me one moment. Thank you
4 for this opportunity, by the way. I'd like to
5 provide you with a little background on me as
6 an appellee. I'm representing myself and I am
7 not a lawyer. If I make procedural mistakes in
8 my efforts to represent myself, please inform
9 me and I will try to follow the proper
10 procedures.

11 I have a master's degree in national
12 security affairs from the Naval Post-Graduate
13 School in Monterey, California. I am not a
14 hydrologist. I am not a biochemist. I do not
15 have expertise in these areas. I served 20
16 years in the Air Force as an intelligence
17 officer and continue to serve the United States
18 Intelligence Community in support of the under-
19 secretary of defense for intelligence.

20 (Reporter ask for clarification)

21 I have a master's degree in national
22 security affairs from the Naval Post-Graduate
23 School in Monterey, California. I am not a
24 hydrologist or a botanist. I don't have those
25 skills. I served 20 years in the Air Force as

1 an intelligence officer and continued to serve
2 the United States intelligence community in
3 support of the under secretary of defense for
4 intelligence as a consultant.

5 My time in the military taught me to
6 follow rules and directions if I know they
7 exist. And as an intelligence officer, I tend
8 to research data provided to me. I highlight
9 this because I do have questions for the expert
10 witness based on the evidence or exhibits that
11 they've provided previously. And I will hold
12 that.

13 I make this statement because I believe
14 that I am very capable of following the
15 directions that the EPA provides in the
16 labeling instructions on herbicides and will do
17 so in treating my property on the pond at 10510
18 Sedgebrook Drive if the current permit is
19 upheld. That would be my opening statement.
20 Thanks for allowing me to have one.

21 HEARING OFFICER: You're so welcome.

22 MR. JUREN: And I cannot cross-examine
23 myself. That's correct. Right?

24 HEARING OFFICER: It would be hard. But
25 if you want to present any rebuttal to the

1 questions that Ms. Graham asked you, feel free.

2 MR. JUREN: I do, I have two things. One
3 is, I too did not understand the relevance of
4 prior actions. I understand where you're
5 trying to go. I would have to state that the
6 e-mail that you provided for me to read states
7 that, "as I am aware," indicating I'm already
8 aware that there is an ongoing activity and
9 there had been a complaint. That does not
10 imply a new complaint. Okay? And that's why I
11 said I think there's only one. I have no
12 further questions for myself at this time. I
13 hold the opportunity perhaps to recall the
14 witness. I don't know if that's authorized.
15 Thank you so much.

16 HEARING OFFICER: So should we break for
17 lunch?

18 MR. ZODROW: I think so.

19 (Discussion off the record.)

20 MR. ZODROW: I will close my case now, so
21 we're done.

22 HEARING OFFICER: But you're deferring
23 your closing argument.

24 MR. ZODROW: Yes, I'm going to defer my
25 closing argument and obviously cross-

1 examination. But, other than that, we have
2 finished our case.

3 MR. JUREN: Can I ask a question? I
4 apologize.

5 HEARING OFFICER: Yes.

6 MR. JUREN: He's finished his case -- and
7 I don't know how this works, again. But it
8 appears to me that you're allowed to enter into
9 evidence documents that weren't here previously
10 as I've seen Counsel do. I have some things
11 that I would like to know whether I can enter
12 them when the time comes that have not been
13 presented previously. I only have one copy,
14 but I'll be glad to give it to you when the
15 time comes.

16 HEARING OFFICER: Well, I think because
17 you all are going first, the time has come.

18 MR. ZODROW: You won't have another
19 opportunity.

20 MR. JUREN: Oh, the time has come? Okay.
21 I would like to enter into -- I don't know how
22 to do this -- evidence a document that I pulled
23 from the website, the official EPA website,
24 about pesticide registration. I would like to
25 utilize this later when I speak with the expert

1 witness. That would be my thought. Now, if
2 you want to wait to enter it until after that.
3 I'm sorry?

4 MR. ZODROW: Not to speak for you,
5 Hearing Officer Petruff. You could reserve
6 that for what's called cross-examination. And
7 when you hear her testimony, you can introduce
8 that as what's called a rebuttal exhibit to
9 rebut what her statement is. So that might be
10 the more appropriate time.

11 If there's nothing you're anticipating
12 coming from the other parties, you can
13 introduce that now. But you do have an issue
14 that it wasn't disclosed in the joint
15 pre-hearing stipulation, so it would be
16 difficult to raise a new document as an
17 exhibit. But you can use those as what are
18 called re -- I apologize if I'm stepping over
19 you. Am I wrong?

20 HEARING OFFICER: No, you're fine. I
21 would say that things that are public documents
22 of state -- local, state and federal agencies
23 are certainly items that I, as a hearing
24 officer, can take note of, and so just for you
25 all to ponder during the lunch hour, if

1 Mr. Juren wants to enter those in, despite the
2 fact that perhaps he didn't know to disclose
3 them previously, they're public records, and so
4 there are exceptions to how you would verify
5 public records and whatnot. So I would be
6 inclined to take them for whatever relevancy
7 they might have.

8 MR. JUREN: So is now the time to do this
9 or later, ma'am?

10 HEARING OFFICER: It's up to you. If you
11 want to hand them over, they can make whatever
12 objections they have. And then if you need to
13 use them in your questions of Ms. Chayet, that
14 would be fine.

15 MR. JUREN: Can I show these to them?

16 HEARING OFFICER: Yes, you need to show
17 them to -- Ms. Graham is the one who likely
18 might have issues.

19 MR. JUREN: Sure, no problem. There's
20 two. This is from the EPA website. It talks
21 about their process, EPA process.

22 MS. GRAHAM: Okay. You acknowledge this
23 is pesticides, not herbicides. I have no
24 objection.

25 HEARING OFFICER: According to what I

1 read, they treat them the same. Herbicide is a
2 pesticide according to the EPA. That is an
3 abstract of the article that Ms. Chayet
4 entered. This talks about the process,
5 pesticides/herbicides.

6 MR. ZODROW: I have no objection.

7 MR. JUREN: This is an abstract of an
8 article that Ms. Chayet had entered previously.

9 MR. ZODROW: It is what it is. I have no
10 objection.

11 MS. GRAHAM: Yes, go ahead. That's fine.

12 HEARING OFFICER: All right. It's going
13 to be called Juren Exhibit 1 and Juren Exhibit
14 2 and entered into the record without
15 objection.

16 MR. JUREN: Thank you.

17 (Juren Exhibits 1 and 2 received in
18 evidence)

19 HEARING OFFICER: We are reconvening at
20 12:30, and it is now the Appellant's show. Ms.
21 Graham.

22 MS. GRAHAM: Thank you, Officer Petruff.
23 Good afternoon. My name is Jane Graham,
24 attorney representing Mr. Anderson.

25 The Environmental Agency is a special

1 agency dedicated to make the right decisions
2 for the environment. But the facts will show
3 that in this case, it simply didn't happen.

4 The EPC staff fails to follow the plain
5 language of their rules that require permits to
6 minimize environmental impacts and have the
7 least environmentally adverse impacts. You
8 can't ignore the plain language of a rule
9 because it's inconvenient.

10 For context, there's a row of homes along
11 Sedgebrook Drive with a pond behind them. The
12 evidence will show that it is connected to the
13 Alafia River basin through a SWFWMD stormwater
14 structure. There's a forested wetland area
15 behind the pond. There's a variety of native
16 vegetation on the pond.

17 There's an ecosystem. The ecosystem
18 supports an abundance of wildlife, birds,
19 including most recently observed sandhill crane
20 colts, alligators, turtles, and it borders
21 Hillsborough County designated significant
22 wildlife habitat. It's in close proximity to
23 Bell Creek, Boyette Springs Park, and it's a
24 lush oasis amongst a sprawling concrete
25 suburbia of south Hillsborough County.

1 My client, Mr. Anderson, has lived in his
2 house since 2018, which the evidence will show,
3 enjoying his view, and he understood that
4 spraying was occurring in the pond for a while
5 and didn't think too much of it until his dogs
6 were diagnosed with cancer within three months
7 of each other.

8 Later Mr. Juren wanted to get rid of some
9 of the vegetation in the pond and hired a
10 company and it was done. Mr. Anderson, who had
11 a history of health problems and whose dogs
12 suffered health problems, eventually reported
13 these activities for unpermitted spraying. And
14 it was determined by EPC that they needed to
15 apply for miscellaneous activities in wetlands
16 permit.

17 Last August, EPA scientist Chantelle
18 Lee went to the pond on a site visit. The
19 original intention, as she has previously
20 testified, was by another gentleman, Mr. Greco,
21 to get a permit for the whole pond. The EPC
22 had said to do it individually. Where does
23 this leave us today?

24 The evidence will show that EPC abdicated
25 their responsibility to evaluate this permit

1 and they did not look at the least
2 environmentally adverse impact. You will hear
3 from our expert, Debbie Chayet, a 37-year
4 veteran from Pinellas County parks, a botanist,
5 who, in evaluating this permit and looking at
6 the specific native and non-native vegetation
7 on site, determined that the herbicide is
8 inappropriate and not needed. An elephant gun
9 to kill a fly. Additionally cumulative impacts
10 were not analyzed and are relevant in this
11 case.

12 Section 1-11.09(1)© provides that:

13 Wetland or other surface water impacts under
14 this authorization shall be minimized to the
15 greatest extent practicable unless defined
16 herein by size and shall be conducted, located,
17 designed and/or constructed so they cause the
18 least environmentally adverse impact.

19 1-11.02 (2) (a) defines an adverse impact
20 as "a negative effect upon a wetland resulting
21 from development which contaminates, alters or
22 destroys or which contributes to the
23 contamination, alteration or destruction of a
24 wetland or portion thereof such that its
25 environmental benefits are destroyed, reduced

1 or impaired or which threatens their present or
2 future functioning."

3 Interestingly, as previously testified by
4 Ms. Dessa Clock, within 1-11.09, the subsection
5 on MAIW is the only place that requires the
6 least environmentally adverse impact. The
7 other sections only mention adverse impact.

8 Either way, this is not what has happened
9 here in this analysis and approval of this
10 permit. EPC staff simply did not take into
11 account the impact on the pond itself or larger
12 impact to the system if the herbicide was used
13 instead of manual or mechanical removal.

14 It fails to take into account the history
15 of unpermitted spraying with the potential for
16 bioaccumulation in the water column and failed
17 to consider the SWFWMD stormwater structure in
18 the pond linking to the Alafia River.

19 The evidence will show that EPC fails to
20 adequately consider environmentally significant
21 habitat as recognized by Hillsborough County
22 and, as Ms. Chayet will testify, had actually
23 seen sandhill crane colts on site most
24 recently.

25 EPC agrees with my client in their

1 stipulation that the applicant has the initial
 2 burden to make a prima facie case of their
 3 entitlement to their permit. Here Mr. Juren
 4 can simply not do this. And even if he did
 5 make this initial showing, the evidence clearly
 6 shows that, per requirements of the code, per
 7 the plain language of EPC's rules, it was not
 8 met.

9 For that reason, we will be presenting
 10 evidence and request today that you deny this
 11 permit application or, in the alternative,
 12 restrict it so that herbicides are not used as
 13 mechanical and manual removal are done in the
 14 least environmentally adverse way possible.
 15 Thank you.

16 And now I'd like to call my first
 17 witness, Ms. Debbie Chayet.

18 HEARING OFFICER: She needs to be sworn.

19 * * * * *

20 DEBORAH CHAYET,
 21 having been duly sworn to tell the truth, the whole
 22 truth, and nothing but the truth, was examined and
 23 testified as follows:

24 DIRECT EXAMINATION

25 BY MS. GRAHAM:

1 Q Could you please state your name for the
2 record?

3 A Deborah Chayet. I go by Debbie.

4 Q How long have you lived in Tampa Bay?

5 A Since 1964.

6 Q Tell us a little bit about your
7 education.

8 A Okay. I have a bachelor of science in
9 botany from the University of Florida and I minored
10 in environmental sciences. I have continued
11 education classes my entire career. I had between
12 two and three hundred hours specifically -- training
13 specifically in aquatics because of a restricted use
14 pesticide license in aquatics that I held while
15 employed.

16 I've had Hazwoper training, which is a
17 form of hazardous materials training. I used to
18 have Hazwoper's certification, which again lapsed
19 when I no longer needed it at work. I formerly
20 held, as I mentioned, restricted use pesticide
21 license in aquatics, also in ornamental turf.

22 As far as education, I had -- also after
23 I got my degree from the University of Florida, I
24 wanted a little more hands-on education, so I
25 actually went to P Tech, which is the Pinellas

1 Technical Education Center, and got certification in
2 horticulture.

3 And I have had classes, numerous classes,
4 at Brooker Creek Preserve. I took grass
5 identification classes with a botanist that was held
6 at Eckerd College. I have taken classes sponsored
7 by Pinellas County specifically on lakes and ponds.
8 How much more do you want?

9 Q Are you currently employed?

10 A I'm sorry? I didn't hear you.

11 Q Are you currently employed by anyone?

12 A Well, I am employed by you at the moment.
13 But I am retired from Pinellas County. I spent 37
14 years with Pinellas County.

15 Q What did you do with Pinellas County?

16 A I spent four years working as an
17 environmental education park naturalist at Sawgrass
18 Lake Park. Then I was promoted to park
19 horticulturist where I was responsible for
20 overseeing horticultural activities in all of the
21 Pinellas County parks.

22 That included nursery operations, crews
23 that ran tree-trimming and transplanting trees out
24 of our tree farms. And a large part of my
25 responsibility was chemical management for the

1 entire department. I did the ordering of materials.
2 I did the training of materials.

3 I heard Mr. Juren mention the data sheet.
4 That's a materials safety data sheet, also known as
5 an MSDS. I trained county staff on those MSDS
6 sheets. I kept the MSDS books current. I tutored
7 staff on exam preparation for acquiring their
8 restricted-use pesticide licenses and did a wide
9 variety of assorted items related to chemical
10 management.

11 Q Okay. Are you a member of any other
12 organizations that have to do with plants?

13 A I am a long-time member, about 25 years
14 or so, of the Florida Native Plant Society. I've
15 gone to I don't even remember how many of their
16 annual conferences. I've held both state-level
17 office and chapter offices for that organization and
18 have gone on more than I can count field trips with
19 that organization, which are essentially in-field
20 study of habitats.

21 Q When you had previously said that you
22 were employed by me, do you mean as an expert by
23 Mr. Anderson?

24 A Yes. I'm sorry, I misspoke. That is
25 correct.

1 Q Have you conducted any biosurveys before?

2 A I have actually conducted a large number
3 of biosurveys. The most recent one was a very
4 extensive biosurvey I hired. After having acquired
5 grant funding, I hired a consultant to perform a
6 biosurvey on the Gladys Douglas Property Preserve in
7 Dunedin, which was a recently acquired property.
8 And I assisted them in performing an extensive
9 floristic survey that covered over a year in going
10 through that property and performing floristic
11 survey, analysis and results.

12 Q Have you visited the site in question
13 here today?

14 A Yes, I have. I visited it on May 26th, I
15 believe.

16 Q And have you reviewed the permit?

17 A I have reviewed the permit and all the
18 discovery evidence that was provided by the EPC.
19 I've reviewed a large number of documents related to
20 this. I've reviewed SWFWMD ERP for this project
21 site. I have reviewed the EPA website relative to
22 pesticide usage. I have reviewed scholarly articles
23 relative to herbicide usage. I've gone through the
24 BOS. I've gone through -- I have read through their
25 Rule 1-11, wetland rules.

1 Q Okay. And, Debbie, I have a copy of your
2 document, which is labeled Deborah Chayet
3 experience.

4 A Yes.

5 Q It looks like it has photocopies of some
6 of your certifications. Do you recognize it?

7 A Yes, I have a certificate, I have had a
8 -- I've been a certified pest control operator since
9 1990, and I still hold that license. I have a
10 certificate -- and I've had it for a number of
11 years -- from FNGLA, which is the Florida Nursery
12 Growers and Landscape Association, certification as
13 a Florida horticultural professional. I've had that
14 for a number of years.

15 I want to go back to one item. When I
16 was employed by Pinellas County as a park
17 horticulturist, I served as a liaison to the Florida
18 Department of Environmental Protection with their
19 invasive species program, which targeted invasive
20 species removal.

21 And as a liaison, I was responsible for
22 communications directly with that division of FDEP,
23 and I also held meetings and some trainings. My
24 region covered four county area that included
25 Pinellas, but it also included Hillsborough County,

1 so I'm familiar with some of the Hillsborough County
2 Parks and (inaudible) -- also Sarasota and Manatee
3 Counties.

4 Q Is there anything else you would like to
5 add relating to your status as an expert in aquatic
6 plant control or invasive plant control?

7 A Well, I've actually been in the field,
8 boots on ground, so to speak, doing restoration
9 planting in a number of Pinellas County lakes and
10 ponds. For example, I did supervise acquired plants
11 and physically helped with the installation of over
12 3000 native plants at Taylor Lake as part of
13 improvements to that lake. I've done that at a
14 number of other waterbodies within the Pinellas
15 County parks.

16 MS. GRAHAM: Thank you. At this point, I
17 would like to offer Ms. Chayet as an expert
18 witness in the field of invasive and nuisance
19 plant management and botany. And I have a copy
20 of her resume I would like to enter into the
21 record.

22 MR. ZODROW: I would like to follow up
23 with a couple of questions just to narrow it
24 before I decide.

25 MS. GRAHAM: Do you agree to the resume?

1 MR. ZODROW: Yes. I have no objection to
2 the resume.

3 MS. GRAHAM: I think we're on Exhibit 5
4 for you.

5 (Appellant's Exhibit 6 received in
6 evidence.)

7 VOIR DIRE EXAMINATION

8 BY MR. ZODROW:

9 Q Good afternoon, Ms. Chayet. I'm Andy
10 Zodrow. I'm the attorney for the EPC. I really
11 have very few questions.

12 Are you qualified to render expert
13 opinions as to the criteria for issuance or denial
14 of a wetland permit, herbicide treatment under the
15 EPC rules?

16 A I am familiar with your permit
17 conditions. I have read through the permit that was
18 issued to Mr. Juren, so I am familiar with the
19 information that is in that permit.

20 Q Have you ever applied for a wetland
21 permit for an activity in Hillsborough County under
22 the EPC rules?

23 A No, I have not.

24 Q Have you ever worked with the EPC rules
25 in any capacity in Hillsborough County prior to this

1 case?

2 A Not specifically, no.

3 Q Before working on this case, have you
4 ever even read the wetland rule or the basis of
5 review adopted thereunder?

6 A Not the current rule.

7 Q Which rule did you read?

8 A Well, I would say not the current
9 iteration of it. Early in my career when I first
10 started being the liaison to FDEP for invasive plant
11 control, I tried to read through the pertinent
12 information for all four counties that I was a
13 liaison for. So I do not know if this iteration
14 currently is the same as during that time period.

15 Q Okay. Prior to this case, had you ever
16 heard of a miscellaneous activities and wetlands
17 permit?

18 A I've heard it. As I said before, I have
19 not applied for one.

20 MR. ZODROW: Specifically once she is
21 tendered as an expert, I have no objection.

22 HEARING OFFICER: Thank you. Entered as
23 an expert witness in botany and nuisance plant
24 management and removal. Is that correct?

25 MS. GRAHAM: Yes.

1 HEARING OFFICER: Okay. And I have
2 labeled this, her resume, as Appellant's
3 Exhibit 6. And that's entered into the record.
4 I seem to possibly be missing one of your
5 exhibits. I missed No. 4. Okay. I have them
6 all.

7 BY MS. GRAHAM:

8 Q Ms. Chayet, have you ever visited the
9 site at 10510 Sedgebrook?

10 A Yes.

11 Q When?

12 A May 26, 2023.

13 Q Tell me about what you observed.

14 A Well, I saw a pond that looked fairly
15 sterile. There were a lot of native plants present
16 there that had not been identified in the permit. I
17 actually produced a plant list of what I saw on
18 site, which I believe Ms. Graham has.

19 There is a considerable number of species
20 present around the pond perimeter that were not
21 identified in the permit that were all native. I
22 think I counted more than 20. I observed one what
23 I presumed to be dead Peruvian willow. That was
24 the only one I saw. I walked the areas that I was
25 allowed to walk which encompassed from Mr.

1 Anderson's property around the pond to the back side
2 where the wetland conservation area is.

3 I brought binoculars with me so that I
4 could try to see the vegetation that might be
5 present on the section of the pond that I was not
6 able to walk to without trespassing, and I chose not
7 to trespass. So I saw what was present in the pond.
8 Probably most significant when I was there is, I saw
9 the presence of four adult sandhill cranes and two
10 young, which are referred to as colts.

11 They were roosting on the property. They
12 were feeding. They were in the pond. The colts
13 were actually hiding right along the littoral shelf
14 of the pond when the adults were there. And then
15 later on, all of them walked out of that littoral
16 shelf and started walking around the perimeter of
17 the pond close to the berm. So there were four
18 adults and two colts. I saw a flock of black-belly
19 whistling ducks, other wildlife, soft-shell turtle,
20 a mallard duck hybrid, dragonflies, butterflies, so
21 there was wildlife there.

22 MR. ZODROW: I do have an objection, Your
23 Honor. And I'm not going to object to
24 testimony just in general related to what was
25 raised in the prehearing stipulation. But the

1 parties had a joint prehearing stipulation in
2 this case filed on May 17. We had also
3 conducted discovery and had a deposition of Ms.
4 Chayet, but her site visit was after that. I
5 think she said it was May 26.

6 THE WITNESS: May 26th.

7 MR. ZODROW: And we did not have the
8 opportunity to conduct any discovery regarding
9 any new issues. I have no objection if she
10 wants to discuss issues that were specifically
11 identified in the joint prehearing stipulation.
12 But it would be unfair at this time to raise
13 new issues, new parts that we did not have the
14 opportunity to question her about. That came
15 much later than even the joint prehearing
16 stipulation. So I would object to any new
17 testimony beyond what's specifically in the
18 joint prehearing stipulation.

19 HEARING OFFICER: Do you have a response
20 to that?

21 MS. GRAHAM: To clarify, Ms. Chayet will
22 be testifying as to her observations when she
23 visited there. She did take some photographs,
24 which I did send you a copy of prior to this
25 hearing, and I believe that we had an

1 understanding that to the extent that the
2 photographs are offered to show what she had
3 actually observed while she was there, you
4 would not have an objection?

5 MR. ZODROW: I don't have an objection to
6 a photograph. But to raising new issues that
7 were not addressed in joint prehearing
8 stipulation at this point would be unfair.

9 HEARING OFFICER: Such as the sandhill
10 cranes and the colts.

11 MR. ZODROW: The existence of significant
12 nesting habitat for sandhill cranes, that was
13 raised far beyond before we could evaluate that
14 question.

15 MS. GRAHAM: And one thing I would say is
16 that I'll have Ms. Chayet testify to this. But
17 it was not, I think, any intention or thought
18 that it was something that she would actually
19 see. But since she did see it, she feels the
20 need to at least --

21 HEARING OFFICER: It is of concern. The
22 schedule was agreed upon early. We all knew
23 what the schedule was. We all knew that we
24 would be here today for a hearing. The fact
25 that she only went out on May 26 and arguably

1 saw interesting things is -- I have to agree
2 with the EPC attorney, in that, you know, that
3 should have been done much much earlier and so
4 that it could have been something, a report
5 perhaps written by her, questions during a
6 deposition. They have not had the chance to
7 cross-examine. You know, yes, they might be
8 able to do it today, but it is -- they are new
9 issues, you know, that's a reason you have
10 experts, so that both sides have a clear
11 opportunity to understand what their testimony
12 and their issues will be presented at a
13 hearing.

14 So I have to agree with Mr. Zodrow. Yes,
15 she went out there. Yes, she saw these things.
16 But for the purposes of the hearing, I'm not
17 sure that they could be determined at this
18 point to be relevant because it's a surprise.

19 MR. ZODROW: It's prejudicial.

20 HEARING OFFICER: Yes, it's prejudicial.
21 So I don't know how you want to continue. I
22 mean, you know, I don't mind having the
23 photographs and this is what she saw. But I
24 don't feel comfortable with testimony with
25 respect to endangered species or anything else

1 that is now being made an issue today.

2 It wasn't in the prehearing stip. It
3 wasn't in the depositions. She hadn't even
4 gone out there for whatever reason, not my
5 issue. I mean, she should have gone out there,
6 I think, earlier, but that's not my issue. My
7 issue is that no party should be surprised at a
8 hearing with respect to new issues.

9 MS. GRAHAM: Officer Petruff, I would
10 just say that to the extent that we would enter
11 these photos just to show what she observed,
12 that's one thing. She also does have a
13 findings report which she had submitted
14 previously which does not include this. And
15 so, just to be clear, these are two different
16 things.

17 HEARING OFFICER: Yes, I understand
18 they're two different things. The findings
19 report, I think, was part of the voluminous
20 things attached to the deposition, so I mean,
21 that's fair game.

22 MR. ZODROW: Correct.

23 HEARING OFFICER: But, you know, now
24 seeing the bald eagle on the property is not
25 kind of thing.

1 MS. GRAHAM: Would you have any objection
2 to me presenting these on the Elmo and just
3 have her walk through what she had seen?

4 MR. ZODROW: I have no objection to
5 displaying a photograph providing it's
6 authenticated and it shows what it shows. But
7 it's the issue that I'm particularly concerned
8 about.

9 (Discussion off the record.)

10 Q So, Debbie, do you see this photo?

11 A Yes.

12 Q What is this a photo of?

13 A That is the flood control structure.

14 Q And did you take this photo?

15 A Yes.

16 Q Is this by the pond?

17 A That is right at the edge of the littoral
18 shelf of this pond and on the berm.

19 MS. GRAHAM: I'd like to enter this. Do
20 you have any objection?

21 MR. ZODROW: I have no objection to that
22 photo.

23 Q Then actually on the other side, because
24 they're double-sided, what is this?

25 A Those are rhexias. That is a native

1 plant that was present on the littoral shelf of the
2 pond and on the berm.

3 HEARING OFFICER: How do you spell that?

4 THE WITNESS: R-h-e-x-i-a.

5 HEARING OFFICER: Give me that so I can
6 mark it, please.

7 MS. GRAHAM: There you go.

8 HEARING OFFICER: I'm marking the flood
9 control structural as Exhibit 7 and the pretty
10 little plant as Exhibit 8. This is no
11 objection, Mr. Zodrow?

12 (Appellant's Exhibits 7 and 8 received in
13 evidence.)

14 HEARING OFFICER: This is no objection,
15 Mr. Zodrow?

16 MR. ZODROW: No objection to that, no.

17 HEARING OFFICER: Any objection, Mr.
18 Juren?

19 MR. JUREN: No, ma'am.

20 Q What is this?

21 A That is giant bulrush, a native wetland
22 plant, and it was present also on the littoral shelf
23 of the pond.

24 HEARING OFFICER: Is there any objection?

25 MR. ZODROW: No.

1 (Appellant's Exhibit 9 received in
2 evidence.)

3 HEARING OFFICER: That will be Exhibit 9.

4 Q What about this?

5 A That is sagittaria. It also goes by duck
6 potato or arrowhead. That is a native wetland plant
7 that is frequently found in the water and also grows
8 a little bit up on the littoral shelf was present at
9 the pond in several places.

10 Q And you took these photos?

11 A Yes.

12 MS. GRAHAM: I would like to enter this.

13 (Appellant's Exhibit 10 received in
14 evidence.)

15 MR. ZODROW: Can I just ask? As she's
16 describing these, she's not saying exactly
17 where these photos were taken or what property
18 or maybe I missed it. But can you identify
19 before I agree to every single photo coming in,
20 because I don't know if these are on Juren's
21 property or if these are on Anderson's
22 property.

23 HEARING OFFICER: I'm having trouble
24 because I can't see what you're showing her, so
25 I have no idea if that is the arrowhead or the

1 giant bulrush.

2 MS. GRAHAM: Which side are you looking?

3 HEARING OFFICER: I'm looking at this

4 part.

5 MS. GRAHAM: That is arrowhead.

6 THE WITNESS: As I mentioned, the
7 arrowhead was scattered in multiple places
8 across the pond. I do not know all of the
9 property owners on that property. It was on
10 both sides of the pond and at both ends of the
11 pond.

12 Q And to go back, where was the rhexia?

13 A The rhexia was right in the corner of
14 Mr. Anderson's property, and a little bit of it was
15 on to the adjacent property.

16 Q I'm going to show another photo.

17 A That is dogfennel. It is a native plant,
18 and there were a couple of patches of it in front of
19 Mr. Juren's property.

20 Q Okay. Did you take this photos?

21 A Yes.

22 Q Okay.

23 A There was some other patches on another
24 property owner's property on the other side of
25 Mr. Anderson's property.

1 Q Without going into detail of what these
2 are, where was this taken?

3 A Those are sandhill cranes and the colts,
4 and that specific photo was taken -- I can't tell
5 where that specific photo was taken. I did observe
6 them on both Mr. Anderson's property and Mr. Juren's
7 property.

8 Q And so you took both of these photos?

9 A Yes.

10 MS. GRAHAM: I'd like to enter these.

11 Any objection?

12 MR. ZODROW: No objection.

13 (Appellant's Exhibit 11 received in
14 evidence.)

15 Q What is this?

16 A Okay. That is mock bishopsweed. It is a
17 native plant. There was a lot of it out there on
18 the houses' side of the pond, a great deal it. And
19 it's actually a larval food for black swallowtail
20 butterflies.

21 Q Is it invasive?

22 A No, it is not.

23 Q What is this?

24 A That is hydrocotyle. That was actually
25 emergent in the water. It is also a native and it

1 is a very common wetland native species.

2 Q And you took both of these photos?

3 A Yes.

4 MS. GRAHAM: I would like to enter these
5 in.

6 MR. ZODROW: No objection.

7 (Appellant's Exhibit 12 and 13 received
8 in evidence.)

9 HEARING OFFICER: Hydro what? How do you
10 spell that?

11 Q Debbie, could you spell hydrocotyle?

12 A Hydrocotyle, h-y-d-r-o-c-o-t-y-l-e. It's
13 also known as marsh pennywort.

14 Q Debbie, what is this?

15 A That's a plant called elephant's foot.
16 It is a native plant that gets a purple flower on
17 it, and it prefers moist habitat.

18 Q Where did you see this on the property?

19 A I started seeing it at the end of the
20 pond and wrapped all the way around to the back side
21 that fronts the wetland conservation area.

22 Q What is this?

23 A Okay. That is a water oak. That was
24 near -- on the other side of the top of berm, was at
25 the edge of the wetland conservation area, and there

1 was a lot of it present.

2 Q Is that invasive or native?

3 A That is native.

4 Q Okay.

5 A That is considered a species expected to
6 be seen in a moist habitat such as the hydroxamic
7 that is present starting at the edge of the wetland
8 conservation area.

9 MS. GRAHAM: Do you have any objection?

10 MR. ZODROW: No.

11 (Appellant's Exhibits 14 and 15 received
12 in evidence.)

13 Q What is this?

14 A That is a vine called hempvine. It's
15 native. Its name is mikania scandens, and that was
16 present, kind of woven in amongst some of the other
17 vegetation in the littoral shelf of the pond and up
18 at the berm.

19 Q Does it provide any kind of habitat for
20 any wildlife or other species?

21 A It is very, very heavily used by a wide
22 assortment of pollinators.

23 Q What is that?

24 A That is a four-spotted pennant. I took
25 that photo because that stick that you see was what

1 I presume to be a dead primrose willow, and it was
2 the only primrose willow I saw on the property.

3 Q So you didn't see any other primrose
4 willows anywhere?

5 A Not from where I was able to access, no.

6 Q To be clear, the primrose willow, that
7 was one of the species listed on the permit. Is
8 that correct?

9 A Yes, that's correct. That is invasive.

10 MS. GRAHAM: I would like to enter this.

11 MR. ZODROW: No objection.

12 MS. GRAHAM: Okay.

13 (Appellant's Exhibits 16 and 17 received
14 in evidence.)

15 Q What is this?

16 A That has two plants in it. The plant
17 that is floating on the surface of the water is a
18 native fragrant water lily. The plant more in the
19 foreground is for pewter grass, which is an
20 invasive.

21 Q Where did you see this on the property?

22 A That was -- I'm not sure if it was
23 actually still in Mr. Anderson's property or if it
24 was in the house next to his property, but it was on
25 the house side of the pond. There were actually

1 several patches of it throughout the pond.

2 Q How much torpedo grass did you see?

3 A There were patches in several places.

4 Q And for torpedo grass that looks like
5 this, given your experience, what would be the least
6 environmental adverse way to remove it?

7 A I would actually suggest taking a
8 weedeater to it. It is really very, very difficult
9 to kill torpedo grass even with herbicides.
10 Herbicides have minimal complete control of it. So
11 using a weedeater would be what I would recommend is
12 the best approach.

13 MS. GRAHAM: I would like to enter this.

14 MR. ZODROW: No objection.

15 (Appellant's Exhibit 18 received in
16 evidence.)

17 Q And not for the purpose of anything other
18 than giving a flavor of what you saw, what is this?

19 A That's the flock of black-bellied
20 whistling ducks that I saw.

21 Q Where is this on the pond?

22 A They were flying in and out the whole
23 time I was there. That particular photo is at one
24 of the ends of the pond.

25 (Appellant's Exhibit 19 received in

1 evidence.)

2 Q And what is this?

3 A That's a native plant. That's an
4 excellent ground cover. It's called phyla
5 nodiflora. It goes by several common names. The
6 most recently accepted common name -- and I have no
7 idea who came up with this one -- it's called
8 fogfruit, f-o-g fruit. Previously it was known
9 as creeping charlie and also matchhead. It's a
10 really good native plant that helps with erosion
11 control and shoreline stabilization on ponds.

12 MS. GRAHAM: I'd like to enter this into
13 the record. Any objection?

14 MR. ZODROW: No objection.

15 (Appellant's Exhibit 20 received in
16 evidence.)

17 HEARING OFFICER: How many more do you
18 have?

19 MS. GRAHAM: Just two more.

20 HEARING OFFICER: All right.

21 Q Again, just for the purpose of what you
22 saw and not getting into specifics, what is this?

23 A That is a photo of an adult sandhill
24 crane and two colts.

25 Q And where was this?

1 A That particular photo was very close to
2 Mr. Anderson's property. I did observe them walking
3 around the entire perimeter of the pond, most of the
4 pond.

5 Q Is this another picture that you took of
6 them?

7 A Yes, that is an adult sandhill crane and
8 two colts. I don't know if I'm permitted to say
9 this, but the adult sandhill crane is feeding.

10 MS. GRAHAM: I'd like to enter this in
11 just for the purpose of being able to see it.

12 MR. ZODROW: No objection.

13 MS. GRAHAM: Thank you.

14 (Appellant's Exhibit 21 and 22 received
15 in evidence.)

16 Q Debbie, I'm going to go back to my desk
17 for a second.

18 HEARING OFFICER: Hang on. We're up to
19 Exhibit 23 for you.

20 MS. GRAHAM: Okay.

21 Q So, Debbie, before we move on, can you
22 tell me, given the native flora that you observed on
23 the pond, what do you think about herbicides being
24 used in that general area?

25 A I would not recommend herbicide

1 application for several reasons, the first of which
2 is, it will kill all the natives in addition to
3 whatever species the applicant is trying to target.
4 The second reason is that an herbicide application
5 done to one specific spot in the pond does not stay
6 in that specific spot.

7 The herbicide moves through the water
8 column, moves through laterally and would be present
9 throughout that entire pond given a certain period
10 of time. So there would be pretty much anything
11 along that littoral shelf including all those native
12 plants that I saw would be killed by that herbicide.

13 Q What would be the -- in your opinion
14 based on what you've reviewed, what would be the
15 least environmentally adverse impact method to use
16 to remove the invasive --

17 A It would be manual. And if you choose to
18 call the weedeater mechanical, then mechanical would
19 be acceptable also because what I saw in that pond
20 was all relatively small in size and could very
21 easily be treated with a weedeater.

22 (Appellant's Exhibit 23 received in
23 evidence.)

24 Q Okay. Debbie, I want to show you a
25 couple more exhibits. Are you ready?

1 A I'm ready.

2 Q Debbie, you had taken a photo of
3 something that looked like a stormwater structure.

4 Is that true?

5 A Correct.

6 Q Have you reviewed this?

7 A Yes, I have reviewed the SWFWMD ERP
8 plans.

9 Q What does it say about -- actually, okay.
10 Looking on Page 2, are there any stormwater
11 structures in the vicinity of the pond?

12 A Yes. I think actually it was on Page 3.
13 It shows a stormwater structure, a structure at the
14 end of the pond, and the plan actually shows the
15 elevation line so you can see the change in
16 elevation from the pond to downstream.

17 That structure also shows that water
18 discharge from that pond moves downstream into the
19 wetland conservation area and discharges into Bell
20 Creek, which is a tributary of the Alafia River, and
21 the Alafia River is in the Alafia River watershed,
22 which is identified by the FDEPS as an impaired
23 water body.

24 Q Why is that relevant to the analysis
25 here?

1 A I think it's very relevant because any
2 herbicide treatment that is done in that pond will
3 eventually discharge through that control structure
4 downstream into the wetland conservation area and
5 have a great deal of potential damage to downstream
6 vegetation.

7 MS. GRAHAM: I'd like to enter this,
8 Officer Petruff, into the record. What is it,
9 Exhibit 24?

10 HEARING OFFICER: Yes. Do you have any
11 objection?

12 MR. ZODROW: I'm going to object for
13 relevance because we -- then I can ask. We
14 think that's the wrong site plan that's
15 attached. That doesn't reflect the property
16 that's the case, Page 3, specifically.

17 MS. GRAHAM: Well, this was provided, and
18 this is Sedgebrook Drive.

19 MR. ZODROW: But that is not the site
20 that is subject to this case. There's a
21 different drawing that identifies the property,
22 but it's not that one.

23 MS. GRAHAM: Is it in here?

24 MR. ZODROW: We don't know what you have.

25 MS. GRAHAM: Well, I'm going to --

1 MR. ZODROW: I can ask her about it on
2 cross-examination, but we believe that that's
3 the incorrect page.

4 Q Debbie, would you like to clarify which
5 page it's on?

6 A Well, the SWFWMD ERP plan set that I have
7 indicates that this is Page 3 in an aerial view.
8 The aerial is so small, it's very difficult to be
9 able to point out exactly where that particular
10 stormwater structure is located. But you do have a
11 photo of it.

12 MS. GRAHAM: Okay. If you'd like to
13 cross-examine her on it, I think that's fine.

14 MR. ZODROW: Yes, we'll ask her about it.

15 MS. GRAHAM: We would like to enter this.

16 (Appellant's Exhibit 24 received in
17 evidence.)

18 Q Debbie, just a few more other photos. So
19 this, have you reviewed this photo? This is a map
20 of the Hillsborough GIS viewer?

21 A Yes, I have.

22 Q What does the purple show?

23 A That is the area of wildlife significant.

24 Q I think it's called the significant
25 wildlife habitat in purple?

1 A Yes, yes, that's correct.

2 Q Do you think that knowing that this is in
3 close proximity to the property, which is there,
4 that there should have been further evaluation of
5 the surrounding environmental habitat before this
6 permit was given?

7 A I do because with the flood control
8 structure on the site, there is going to be
9 downstream discharge from that pond. And any
10 applications of products of any kind put in that
11 pond will discharge downstream into that wetland
12 conservation area and could eventually also
13 discharge into that area of significant wildlife
14 habitat.

15 Q Okay.

16 A I have personally seen that happen in a
17 case where one of the parks that I work with, there
18 was a herbicide application that was performed
19 upstream that traveled downstream into some ponds
20 and specifically in Ridgecrest Park, and that park
21 used those ponds as a source of irrigation water and
22 they irrigated with the water. And there was damage
23 to the surrounding landscape and in vicinities
24 around the irrigation heads, the herbicide actually
25 bleached green grass totally white.

1 Unfortunately, I do have a photo of it,
2 but I was not able to find it because my desktop
3 computer died on me, and that's where the photo was
4 located. But I have seen this in person, so I have
5 witnessed downstream negative impacts from upstream
6 herbicide application.

7 Q Okay. And you -- in your capacity of
8 working with Pinellas County, you worked on that
9 case is that you're referring to. Is that correct?

10 A I observed that case. I saw it on site,
11 and I was aware that there was an application done
12 upstream.

13 Q And this is kind of an aerial photo by
14 Hillsborough GIS. Can you see it?

15 A Yes, I think I have a copy of it. Is
16 that the same document?

17 Q Yes. And why is this relevant?

18 A Well, the aerial really shows a good
19 overall view of the location of the pond and its
20 being immediately adjacent to a sizeable wetland
21 conservation area.

22 Q And that's relevant for the assessment of
23 minimizing environmental impacts and what is the
24 least environmentally adverse impact?

25 A I think it definitely is because, again,

1 a herbicide is not going to stay exclusively in that
2 pond. It will travel downstream by a water through
3 conveyance to that flood-control structure that I
4 showed a photo of or that you showed a photo of that
5 I took. That water will convey downstream into that
6 wetland conservation area.

7 MS. GRAHAM: I would like to enter this
8 into the record as an exhibit.

9 MR. ZODROW: No objection.

10 HEARING OFFICER: The whole thing?

11 MS. GRAHAM: Just the photos that we
12 referenced.

13 HEARING OFFICER: Okay. This will be
14 Exhibit 25.

15 (Appellant's Exhibit 25 received in
16 evidence.)

17 Q Debbie, did you prepare an expert report
18 for this?

19 A Yes, I did.

20 Q What were your findings based on? Well,
21 let's back up. What did you review in making your
22 expert report?

23 A I reviewed the permit and all of the
24 associated photos taken by EPC. I reviewed the
25 SWFWMD ERP. I reviewed aerial images of the site.

1 I reviewed the BOS. I reviewed pretty much all the
2 information provided by the EPC.

3 Q Okay. And --

4 A BOR too, basis of review. I think I said
5 BOS. I apologize.

6 Q Did you review any articles as part of
7 your analysis?

8 A I actually researched impacts of
9 herbicides, and I reviewed several different
10 articles which specify some of the impacts of
11 herbicides. I believe those are attached. And
12 there were some significant statements in those
13 articles.

14 For example -- and I will read one
15 particular statement that came out of the article,
16 Herbicide Exposure and Toxicity to Aquatic Primary
17 Producers. And it states, "Resuspension of
18 sediments contaminated with herbicides can result in
19 the release of herbicides into the water column.
20 Resuspension can therefore also expose phytoplankton
21 and free-living aquatic plants indirectly to
22 herbicides accumulated in the sediment."

23 Another article I've researched was
24 Toxicity of Herbicides: Impact on Aquatic and Soil
25 Biota and Human Health that stated, "When herbicides

1 are dispersed in the water or sediments in
2 suspension of rivers, they can end up in other
3 ecosystems such as estuaries. Considering the prior
4 literature, it is likely possible that the effects
5 of herbicides do not occur only at the places that
6 they are applied but also in places distant from
7 their application."

8 I also reviewed Water Resource Pollution
9 by Herbicide and Residues. As stated, many of these
10 effects are chronic, non-fatal and often not
11 observed by casual observers that have consequences
12 for the entire food chain as described below. And
13 the examples that this article listed were, death of
14 the organism, cancers, tumors and lesions in fish
15 and animals, inhibition or reproduction failure,
16 suppression of the immune system, endocrine,
17 (hormonal) disturbance, cell and DNA damage,
18 teratogenic effects which are physical deformities
19 such as curved beaks in birds; weakened health of
20 fish marked by a low proportion of red to white
21 blood cells, excessive slime in fish scales and
22 gills, among others; inter-generational effects,
23 (effects are not evident until subsequent
24 generations of the organism), and the article also
25 states, other physiological effects, such as the

1 thinning of eggshells.

2 Q Sorry. Go ahead.

3 A I'm sorry. Go ahead.

4 Q No, no, you go ahead.

5 A I didn't hear you. I'm sorry.

6 Q No, I interrupted. It's all right, you
7 go ahead.

8 A I also got information directly off of
9 the EPA website that stated: Herbicides are also
10 directly applied to waters to control vegetation in
11 ponds, ditches, irrigation canals and recreational
12 waters. Such applications are sources of exposure
13 at the point of application and downstream.

14 Another statement off the EPA website:
15 Rather than causing direct toxicity to organisms,
16 herbicides may contribute to other stressors, for
17 example, instream habitat alteration via riparian
18 devegetation. In such cases, herbicides can be
19 considered as part of the pathway for the proximate
20 cause of impairment.

21 Another statement from the EPA website,
22 secondary effects of herbicides are mediated by low
23 DO, which is dissolved oxygen, concentrations from
24 plant decomposition and changes in trophic structure
25 due to plant community changes. Additionally,

1 herbicides may reduce taxa richness and abundance
2 of fish and benthic macroinvertebrates due to
3 reductions of sensitive species and increased
4 abundance of tolerant species at high
5 concentrations.

6 Another additional statement from the
7 EPA: Direct applications may result in direct
8 toxicity to non-target plants and animals or
9 indirect effects due to the death and decomposition
10 of plants. Impairments also are more likely when
11 herbicides are applied together or with other
12 pesticides resulting in additive or synergistic
13 effects.

14 Another statement from the EPA:
15 Increased herbicides in streams can adversely affect
16 stream flora and fauna via several mechanisms
17 including reduced growth, condition and
18 reproduction, increased mortality and changes in
19 behavior. These effects can result in biologically
20 impaired macrophyte, periphyton, phytoplankton, fish
21 and invertebrate assemblages which in turn can
22 contribute to changes in community structure and
23 ecosystem function.

24 Q Debbie, once herbicides are applied to a
25 pond, how long are they there?

1 A I am sorry, Ms. Graham. I didn't hear
2 you.

3 Q Once herbicides are applied to a pond,
4 how long are they there?

5 A That is variable from herbicide to
6 herbicide. They each have their own individual
7 half-life, which is the amount of time, essentially,
8 that a herbicide would stay present. I do know that
9 the most common herbicides used for treatment of
10 vegetation in ponds do stay present in the soil and
11 sediment and can be there. And anytime essentially
12 that there is a disturbance in that soil or sediment
13 such as, say, rainfall, that that herbicide may be
14 able to be released back up into the water column
15 and then, in this particular pond, move downstream
16 into the wetland conservation area.

17 Q Do you have any specific concern with
18 Diquat 2 or Sonar herbicide?

19 A Well, I will say Sonar specifically was
20 the herbicide that was used. In the example I gave
21 you where I've seen downstream damage, Sonar was the
22 product that was applied for treatment of hydrilla
23 in an upstream property, and that product moved
24 downstream into the waterways of Ridgecrest Park and
25 then resulted, as I mentioned before, in damage to

1 vegetation in the park and really was very
2 significant to see green sod, lawn turf, whatever
3 you would like to describe it as, bleached
4 completely white.

5 Q If Sonar herbicide had previously been
6 applied in this lake, would that have an impact on
7 whether further application of herbicides would
8 cause further impacts?

9 A Anytime a herbicide is applied, it's
10 going to have impact not only to the target
11 vegetation, but in many cases to non-target
12 vegetation because herbicides move throughout the
13 water.

14 Q What is bioaccumulation?

15 A Bioaccumulation is essentially the
16 accumulation of a biological product or in this case
17 can be the accumulation of herbicides and herbicide
18 metabolites into the soil. It could also
19 potentially accumulate in water. In most cases
20 where you see accumulation is in soil.

21 Q In this particular case, would you have a
22 concern of bioaccumulation based on the history of
23 unpermitted spraying?

24 A I would. I don't know what particular
25 products were used by the property owners and/or by

1 their contractors. The most common products tend to
2 be Diquat, copper sulfate and Sonar. Diquat and
3 copper sulfate definitely have been shown through
4 studies to accumulate in the soil and be persistent.
5 In fact, I think it's the case that Diquat actually
6 binds up with soil particles, so it stays present.

7 Q Should the Environmental Protection
8 Commission staff have reviewed impacts to an area
9 larger than the immediate pond in this case?

10 In this particular case, I think they
11 should have because there is water discharge from
12 the pond again into off-site properties. And in
13 this case, those off-site properties happen to be
14 wetland conservation areas. So there is no
15 mechanism that I know of to apply herbicide to a
16 small section of a pond and not have it move
17 throughout other areas.

18 So, for instance, hypothetically, if one
19 of the property owners applied herbicide to their 25
20 feet that is allowed in a permit, there is no way to
21 keep that herbicide specifically in that 25 feet of
22 water. It will spread to adjacent properties and it
23 will spread throughout the pond eventually.

24 Q Do you think that manual removal would
25 have been less environmentally adverse in this case?

1 A Definitely it would be less
2 environmentally adverse in this particular case with
3 the caveat that if, for example, weedeating is done
4 around the shoreline edge, that the debris is not
5 allowed to fall back into the water because that
6 debris would then provide nutrients into the water,
7 which would not be beneficial to the quality of the
8 water.

9 Q Just to go back, if there was a history
10 of unpermitted spraying in the pond, would that be
11 relevant to your analysis now?

12 A I think it would be very relevant because
13 it would imply that there is more than likely
14 bioaccumulation already present in that pond, and
15 additional herbicide treatments would simply add to
16 that bioaccumulation.

17 Q At this point, could you go through your
18 summary in your findings report and walk me through
19 just a little bit about what you base your findings
20 off of starting with No. 1?

21 A Okay. No. 1, finding that EPC failed to
22 follow their permit requirements to evaluate the
23 least environmentally adverse impact for this
24 permit. In this pond, since there is water
25 discharge off site, there is going to be a negative

1 or adverse impact to property off site. There would
2 be a negative or adverse impact to adjacent
3 properties since there is no way to confine a
4 herbicide treatment to one piece of water in that
5 pond without having it spread.

6 So allowing a herbicide treatment in one
7 segment of that pond will potentially negatively
8 impact all of the other property owners that own
9 property or a portion of that pond. It will also
10 negatively impact the properties off site by a
11 discharge of water.

12 As I mentioned before, the water is
13 discharging to a wetland conservation area and
14 ultimately into the Alafia River watershed, which
15 this pond is a part of, and the Alafia River
16 watershed is an impaired waterbody.

17 Q And so that goes to Parts 2 and 3 as well
18 of your findings?

19 A Yes. And I would also want to indicate
20 that there is a cumulative effect here because one
21 treatment can't stay in place. But you may have
22 more than one property owner on that pond that
23 wishes to do herbicide applications. That creates a
24 cumulative effect in that pond. And since we know
25 the water discharges off site, there is also a

1 potential cumulative effect off site into that
2 wetland conservation area.

3 Q And, finally, it is for No. 5 that -- can
4 you explain that EPC lacks consideration of the
5 factors above? Explain that a little bit.

6 A Sorry. I just lost my image. Hang on, I
7 want to be able to see who I'm talking to. Okay. I
8 wanted to be able to read No. 5 to you and I lost my
9 paper, I'm sorry. In my statement that the EPC --
10 I'm sorry, I can't find No. 5. Here it is. "The
11 EPC permit issuance lacked consideration of the
12 factors identified above."

13 I think that the EPC did not take into
14 consideration, per their own conditions, that there
15 would be negative or adverse impacts to adjacent
16 property owners, they did not consider negative or
17 adverse impacts to properties off site and there
18 would be because of discharge of water from that
19 pond off site.

20 They did not take into consideration the
21 cumulative effects of repeated herbicide
22 applications would have on not only that pond,
23 adjacent property owners, but also off-site
24 properties since there would be discharge per site
25 to off-site properties. I think those are factors

1 that should be included.

2 And I understand the testimonies that I
3 heard earlier. Those were generic conversations. I
4 did not hear a lot that discussed, specific to this
5 pond, adverse impacts to adjacent neighbors or
6 adverse impacts to downstream wetland conservation
7 areas. And those are present in this specific case.
8 And I think those should have been considered
9 because there would be adverse impacts in this
10 particular pond to adjacent neighbors and adjacent
11 properties.

12 Q Such as? Could you give examples? I
13 know you had mentioned it earlier.

14 A I'm sorry. Go ahead.

15 Q Go ahead. Just if you could give
16 examples of what those impacts might look like.

17 A Well, again, I refer back to what I said
18 about the fact that herbicides are not going to stay
19 in the specific sliver of water owned by a single
20 person. There are multiple property owners of that
21 pond. And what one property owner does in that pond
22 is going to impact all the other property owners in
23 that pond, and it's also going to impact the
24 downstream property owners, which in this case
25 happens to be a wetland conservation area, and

1 ultimately the potential for herbicides to move
2 through Bell Creek into the Alafia River and
3 disperse.

4 Q I have no further questions. Is there
5 anything else that you would like to add?

6 A I think those were highlights.

7 MS. GRAHAM: Thank you very much. Oh.
8 And actually before I stop, I do have a copy of
9 Ms. Chayet's findings and the attached articles
10 that she mentioned that I would like to enter
11 into evidence.

12 HEARING OFFICER: Do you have any
13 objection, Mr. Zodrow? Mr. Juren?

14 MR. ZODROW: No objection.

15 MR. JUREN: No objection.

16 (Appellant's Exhibit 26 received in
17 evidence.)

18 HEARING OFFICER: This is going to be
19 Exhibit 26. I have all those other exhibits
20 that I set aside until we waited on the
21 testimony that you had objected to due to
22 relevance, so do we need to deal with those now
23 or would you like to do your cross-examination
24 first?

25 MR. ZODROW: I think we should deal with

1 them now. I didn't see anything that made
2 those become relevant to this case. I have
3 some follow-up questions, but they're not going
4 to be concerning those.

5 MS. GRAHAM: Well, I would say that Ms.
6 Chayet testified to bioaccumulation and the
7 impact of Sonar on a previous specific case
8 that she had seen in Pinellas County and that
9 this is something that would be relevant in
10 this specific permitting case because if there
11 was a pre-existing unpermitted use of these
12 different herbicides, it could have an impact
13 on the bioaccumulation and further impact of
14 environmental adverse impacts.

15 MR. ZODROW: Your Honor, I appreciate
16 Counsel's argument. I still think it's
17 irrelevant. They say what they say. I think
18 they're irrelevant to whether or not there's
19 reasonable use provided by the permit.

20 HEARING OFFICER: Let's go through these.
21 So we have a service contract.

22 MR. ZODROW: Yes.

23 HEARING OFFICER: It exists. Mr. Juren
24 said he signed it. So any objection to the
25 service contract? I mean, I understand

1 relevancy. For the fact that there is a
2 service contract, it existed, he confessed.

3 MR. ZODROW: I agree, I agree. I have no
4 objection. Beyond the relevancy, I have no
5 objection for any of these.

6 HEARING OFFICER: All right. So I'm just
7 going to note your objections to the relevancy
8 for Exhibit 2, Composite Exhibit 3, Exhibit 4,
9 which is the October 5th letter telling him he
10 was a bad boy. The e-mail from Mr. Shockley
11 dated July 14th encouraging Mr. Juren to get a
12 permit. And then we have this one, which is
13 Exhibit 24, which you had some specific --

14 MR. ZODROW: I'll raise that in a moment.

15 HEARING OFFICER: So I'll enter these and
16 put it little note about relevancy as soon as I
17 can find my sticky notes in my briefcase and
18 then you can proceed, Mr. Zodrow.

19 (Appellant Exhibit 3 and 4 received in
20 evidence.

21 MR. ZODROW: I'll give you a moment.

22 THE WITNESS: Is it possible to take a
23 five-minute break before cross?

24 MR. ZODROW: Sure.

25 THE WITNESS: Thank you very much.

1 (Recess from 1:46 p.m. to 1:50 p.m.)

2 HEARING OFFICER: Back on the record at
3 1:50. Mr. Zodrow?

4 MR. ZODROW: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. ZODROW:

7 Q I just have a few questions. One
8 question going to Appellant's Exhibit No. 3 that you
9 identified earlier, the SWFWMD plans, can you
10 identify in Exhibit 3 the location of either of the
11 appellant's property or the applicant's property?
12 Can you identify either property in that exhibit?

13 HEARING OFFICER: Are we talking about
14 this one?

15 MR. ZODROW: Yes, yes.

16 HEARING OFFICER: I have that listed as
17 Exhibit 24.

18 Q Exhibit 24 as it came in. I'm sorry?

19 HEARING OFFICER: That's all right.

20 Q In Exhibit 24, can you identify either
21 the appellant's property or the applicant's
22 property?

23 A It is very difficult to see it, and I do
24 not have the folio numbers for the properties to see
25 which is where. I mean, I can identify it on an

1 aerial. But on that exhibit from what I can view,
2 it's very difficult to identify.

3 Q So you can't identify the location of
4 either property within that drawing?

5 A I have a very difficult time seeing it,
6 so, no, I cannot.

7 Q I can give you a moment longer. No? Can
8 you identify the control structure in that exhibit?

9 A The control structure is present on the
10 lower left-hand side of that image where it says
11 control structure.

12 Q Is it the control structure that appears
13 to be connected to a permit -- what looks like a
14 permitted stormwater pond or mitigation area, the
15 crosshatched area?

16 A It is a control structure that discharges
17 into what's identified as the wetland conservation
18 area.

19 Q So that's a control structure that
20 discharges into the pond. Can you identify the
21 control structure that discharges out of the pond in
22 that exhibit?

23 A That's not the elevations that I
24 previously saw. This control structure discharges
25 from the pond into the wetland conservation area.

1 Q So the discharge that you're identifying
2 on that exhibit in the lower left-hand corner, is
3 that discharging into the pond wetland conservation
4 area, or is that discharging out of the pond?

5 A I believe I put in my report the
6 elevation showing it's discharging out of the pond
7 into the wetland conservation area.

8 Q I want to clear something up. On the
9 back of the exhibit, there's another plan. It says
10 Sheet 3. It's actually -- it was originally labeled
11 EPC's Exhibit No. 5. I think that may have been
12 attached to the Appellant's exhibit.

13 MR. ZODROW: I apologize. I'm trying to
14 articulate. We believe she's looking at the
15 wrong plan. There is a plan that identifies
16 it, but it's not on the plan that the witness
17 is looking at. So there is a separate plan
18 that got in the EPC's file that we identified
19 as Exhibit 5, and it should be in your folder.

20 HEARING OFFICER: Okay.

21 MR. ZODROW: Okay. In the back of your
22 exhibit, it actually was Appellant's Exhibit
23 No. 5, it was EPC Appellee's Exhibit No. 5 in
24 your list of exhibits that were conveyed or
25 provided to the other parties.

1 There's another exhibit that shows a
2 SWFWMD plan, but that's the correct plan for
3 this site. And we believe that you had
4 attached it to the back of the exhibit. They
5 actually came from two different pieces of
6 paper. And we believe that you may have
7 attached it to the last page.

8 MS. GRAHAM: Is this the correct one?

9 MR. ZODROW: Correct, yes.

10 MS. GRAHAM: So I do not have a printed
11 version of that, so that was probably my fault.

12 HEARING OFFICER: You think?

13 MS. GRAHAM: Thanks, Officer, yes. I
14 take sole responsibility. Can I e-mail these?

15 HEARING OFFICER: These were given to me
16 all stapled together.

17 MR. ZODROW: That's wrong, that's wrong.
18 We thought that might have been it. That is a
19 plan that shows the appellant and applicant's
20 property but doesn't show -- and the control
21 structure, but it's not the plan that was
22 introduced into evidence by the witness -- of
23 the control structure on the property. Trying
24 to be candid about it.

25 MS. GRAHAM: Do you have any further

1 questions?

2 MR. ZODROW: I'll let you redirect that.
3 But I wanted to point out that that plan, the
4 exhibit as it currently stands does not
5 reflect -- we do not believe it reflects
6 anywhere on the property. It actually is part
7 of the system, but it doesn't show the control
8 structure and it doesn't identify either
9 property owner.

10 HEARING OFFICER: Okay.

11 MR. ZODROW: So at the other side the
12 pond, it's outside the scope of the area.

13 HEARING OFFICER: Okay. So you're trying
14 to tell me that Exhibit 24 doesn't say what the
15 witness indicated it said because we don't have
16 the right picture?

17 MR. ZODROW: That is correct, that is
18 correct, yes.

19 HEARING OFFICER: You could try to fix
20 that later.

21 MR. ZODROW: We'll let you fix that
22 later. And if I have to put on a rebuttal
23 witness, I could have Ms. Clock, just for that
24 reason, explain that under oath. But I'll give
25 her the opportunity to fix that. I just wanted

1 to make sure. I'm objecting to the one that's
2 there now.

3 HEARING OFFICER: Okay.

4 Q Ms. Chayet, you had testified about some
5 historic or previous impacts that you had seen
6 downstream where vegetation was affected by upstream
7 herbicide use. Do you know if that was a violation
8 of the permit or the labeling instructions when that
9 herbicide treatment was done?

10 A It was not a violation, to my knowledge.
11 The specific treatment with Sonar requires signs be
12 posted with a specified time period that no one is
13 to enter the water and water cannot be used for any
14 purposes. And this damage occurred outside of that
15 time frame that was required by the label to have
16 treatments posted.

17 Q But do you have firsthand knowledge that
18 it was applied in accordance with the labeling
19 instructions?

20 A Well, much like the EPC staff has
21 testified, an application that is done, I am
22 expecting the people to any application to comply
23 with the labeling as per the EPA.

24 Q But you don't know personally whether or
25 not that occurred in this particular instance?

1 A I could watch it firsthand and not know
2 if it was done totally accurately because I did not
3 see, for instance, calibration of the equipment
4 prior to treatment being done.

5 Q Okay.

6 A Without observing that, the calibration,
7 I could watch treatment be done and still not know
8 if it was done completely accurately.

9 Q Is it possible that the dead vegetation
10 was caused by over-application of herbicides?

11 A Not to my knowledge. It was not the
12 first treatment that had been done in that upstream
13 area. There had been numerous treatments done in
14 other occasions where we had downstream damage, and
15 it was done by licensed applicators who worked for
16 Pinellas County.

17 Q But it wasn't you that had actually
18 applied the herbicide?

19 A No, it was not.

20 Q Okay.

21 A Ms. Chayet, you had testified herbicides
22 have toxic characteristics, had all these
23 characteristics that you went through in your
24 findings report. Is there an example that you can
25 provide the hearing officer where herbicide

1 application on a jointly owned pond or lake would
2 cause less environmentally adverse impacts than the
3 requirement to only use hand removal methods?

4 A Well, some of the information I quoted
5 from the EPA does indicate off-stream or downstream
6 traveling of herbicide. I certainly have other
7 information that would speak to adverse impacts of
8 herbicides on site and off stream that I did not
9 give you the quotes for.

10 Q My question is, though: In what
11 circumstances would hand removal cause more adverse
12 impacts than herbicide treatment?

13 A I do not anticipate hand removal would
14 cause more adverse impact than herbicide. Herbicide
15 is going to cause the most adverse impact of any of
16 the control options presented. Herbicides by far
17 will have the most adverse impacts.

18 Q Can you explain to the hearing officer,
19 then, what your objective criteria would be for
20 selecting a specific method for herbicide treatment?
21 If you were to write a permit, how would you
22 determine whether or not one property would require
23 hand removal, another property would require
24 mechanical and another would require herbicide
25 treatment? What do you base that on?

1 A Well, aside from my extensive training
2 and experience, you need to look at what's present
3 on the property, the quantity of what's present on
4 the property, the size of what's present on the
5 property, the location of what's present on the
6 property. The impacts individual treatments would
7 have adjacent to a specific location where treatment
8 is being performed and, again, the off-site impacts.

9 Q So where would you find in the EPC rules
10 a preference for a type of method of treatment, be
11 it mechanical, hand or herbicide? What agency rule
12 do you point to?

13 A Well, I actually think that's a case of
14 where the EPC rules are lacking, they are really a
15 bit vague in that area. They don't address adverse
16 impacts in anything other than a very generic or
17 generalized way. And one statement doesn't fit all
18 cases.

19 Q But you can't identify a specific rule
20 that you can point to?

21 A Well, your rule that talks about having
22 minimizing adverse impacts -- sorry, I need to pull
23 up the permit. The rule that talks about having
24 minimal adverse impacts, the EPC rule that states
25 that, it's in your 1-11.

1 Q Okay. Go on. Finish.

2 A I think it's a generic statement because
3 it's open to interpretation as to who is defining
4 what a minimum adverse impact is. In my
5 professional opinion, herbicides are not the least
6 adverse impact, they are the most adverse impact.
7 And the use of herbicides in this case, in this
8 particular pond, I don't feel is warranted since the
9 desired goal can be achieved by use of a
10 non-herbicide treatment as I mentioned before in the
11 case of grass using a weedeater.

12 Q Have you personally applied herbicides to
13 aquatic systems?

14 A Not to aquatic systems. I have applied
15 herbicides to upland systems approaching aquatic
16 systems.

17 Q What do you mean "approaching"? Did it
18 involve wetland vegetation?

19 A Again, it involved vegetation that could
20 be upland or wetland. During testimony, I heard
21 reference to Brazilian pepper. Brazilian pepper can
22 be considered upland because it does -- obviously
23 it's a major invasive exotic and upland habitat. It
24 also can be considered a wetland issue because you
25 find it extensively in freshwater areas and also in

1 estuary areas.

2 Q Are you familiar with the Florida
3 Administrative Code 62.340?

4 A I would have to specifically look it up
5 if you're going to ask me a question about it.

6 Q Are you qualified to perform wetland
7 delineations in Florida?

8 A I do not have a certification for wetland
9 delineations, but I do believe I am qualified.

10 Q Isn't identification of plants a big part
11 of wetland delineations?

12 A Yes, it is, as well as other factors.

13 Q Can you identify what plants are
14 identified as wetland plants in state rules for
15 purposes -- I'm trying to establish that there's a
16 set of plans. Do you know the set of plants that
17 the state has identified as wetland vegetation?

18 A I would have to read the specific rule,
19 but I do know wetland vegetation, and I do know what
20 is very commonly found in freshwater areas.

21 Q Just discussing briefly the weedeater
22 option, the mechanical option in that manner,
23 doesn't that impact native vegetation?

24 A Well, that goes back to the person
25 needing to know what is native and non-native. That

1 goes back to the property owner needing to know
2 what's native and non-native and a contractor
3 needing to know what's native and non-native and
4 hitting non-target species versus the intended
5 target.

6 Q I do have a question. Is Diquat an EPA
7 approved herbicide for aquatic systems?

8 A Yes. That doesn't mean it has -- it
9 doesn't have adverse impacts. Diquat, in
10 particular, binds to the soil and bioaccumulates in
11 the soil very readily.

12 MR. ZODROW: I have no further questions.

13 HEARING OFFICER: Mr. Juren, your turn.

14 MR. JUREN: Thank you, ma'am. I don't
15 know how to enter these. I gather these are
16 already entered. So as long as I speak to
17 these and state what they are?

18 HEARING OFFICER: Yes, sir.

19 MR. JUREN: I would also like to be able
20 to speak to her comments on this --

21 HEARING OFFICER: That's Exhibit 26.

22 MR. JUREN: Thank you, Exhibit 26. Thank
23 you, ma'am. Okay. Just trying to figure out
24 how to do this.

25 CROSS-EXAMINATION

1 BY MR. JUREN:

2 Q This is actually the large packet that
3 you provided, with your findings and the articles.
4 That's what this is. That's the exhibit that I will
5 reference here in just a moment. Is that okay?

6 A Okay. That's fine.

7 Q There are some others that I apologize, I
8 didn't know I needed to send them to you earlier,
9 and I've gone through the hearing officer. One is
10 simply the abstract for one of the articles that you
11 referenced, just the abstract of that article.

12 A Could you read the title?

13 Q Yes. It's the "Herbicide Exposure and
14 Toxicity to Aquatic Primary Producers." It's the
15 abstract of the particular article that you placed.
16 Okay? That's what that is. Right there you can see
17 it. That's just an abstract of the article that you
18 provided.

19 A I'm sorry. Could you please repeat the
20 article? I'm trying to find it.

21 Q Certainly. "Herbicide Exposure and
22 Toxicity to Aquatic Primary Producers." It was one
23 of the two articles that you reference in your
24 finding.

25 A Yes. I'm trying to find it in the

1 exhibit. Just give me one second.

2 Q I need to clarify. It's not in your
3 exhibit. I didn't realize I had to turn it in
4 early. I brought it in today, I will reference it.
5 But this is a publicly available site for the
6 abstract of that particular article, that's all that
7 is.

8 And the other item I brought in today
9 that I didn't know I had to have -- and I apologize
10 -- is just simply a printing of the EPA website
11 about pesticide registration. Okay. So I might
12 reference that as we speak if that's okay. So this
13 is publicly available. And you can go to the
14 website. If you want to, I can give you that
15 website if you want to go to it, but those are the
16 items that I will be referencing.

17 Ms. Chayet, first, let me start off by
18 saying thank you for your efforts to protect the
19 environment. I too am concerned with the
20 environment, and this is why I spend \$43,000 to put
21 solar panels on my house to reduce my carbon
22 footprint. So I do care about the environment, and
23 I appreciate your efforts in this realm as well.

24 Now, Ms. Chayet, is the EPA, the
25 government organization, responsible for the review

1 and approval of any pesticides, herbicides to be
2 used in the United States?

3 A Yes. I have here -- and I just showed it
4 to you about pesticide registration. I have here
5 the top-level responsibilities of the EPA when it
6 comes to pesticides and herbicides as explained on
7 their website.

8 Q Are you aware of the evaluation process
9 of the EPA?

10 A Somewhat, yes.

11 Q Then you recognize that the EPA must
12 evaluate the human health risks (including sensitive
13 groups such as children and immune-suppressed
14 individuals). Do you recognize that?

15 A Yes.

16 Q You also recognize that they evaluate
17 environmental risks by reviewing data on potential
18 for groundwater contamination, risks to endangered
19 and threatened species and potential for endocrine
20 disruption effects?

21 A Yes.

22 Q Okay. You also recognize the EPA also
23 implements a risk assessment and peer review?

24 A Yes.

25 Q Okay. What are the results of those

1 evaluations?

2 A That's not a question I can answer.

3 They're different for every product that is

4 registered.

5 Q However, the results in mind -- let me
6 clarify that. Does this result in approval or
7 disapproval of the use of pesticides based on the
8 findings and evaluations and the issuance of
9 pesticide label for the pesticides if approved?

10 A If the EPA registers it, it does make it
11 eligible to be used. It also has to be used in
12 accordance with the product label. And
13 unfortunately, there is much insufficient
14 enforcement of how pesticides are properly used.

15 Q So what is the purpose of the pesticide
16 label?

17 A Essentially the pesticide label is the
18 law.

19 Q It's the law on how to utilize that
20 particular chemical or pesticide or herbicide. Is
21 that correct.

22 A That's one portion of it.

23 Q What is another portion?

24 A It does provide conditions where it
25 should not be used. It provides specific conditions

1 on what it can be applied to and in a lot of cases
2 what particular plant species it can be applied to.

3 Q So that stacks within what I was thinking
4 that was too. Thank you. I'd like to read the
5 overall intent of the pesticide label as it's
6 explained on the EPA's website, and this is in that
7 particular Juren Exhibit 2. The overall intent of
8 the label is to clear directions for effective
9 product performance while minimizing risk to human
10 health and environment. It is a violation of
11 federal law to use a pesticide in a manner
12 inconsistent with its labeling.

13 The court considers a label to be a legal
14 document. In addition following labeling
15 instructions carefully and precisely to ensure safe
16 and effective use. So you are correct. That label
17 is a legal document that must be followed based on
18 federal law. Is that correct? Same understanding?

19 A Yes.

20 Q As the EPC only allows the use of EPA
21 approved herbicides and the EPA requires all users
22 of approved herbicides in the U.S. to follow the
23 labeling instructions when using herbicides, I would
24 admit I was surprised that none of the documents you
25 cited or provided previous to today that I saw were

1 from any of the studies performed by the EPA.

2 With that said, I have reviewed the
3 documents you provided. In fact, one of the
4 documents highlights the reasons I want to be
5 allowed to use herbicides to treat my property.
6 That statement comes from the 2013 article you
7 provided, "Toxicity of Herbicides: Impact on
8 Aquatic and Soil Biota and Human Health." Do you
9 have that document available to you?

10 A Can you give me that title again, please?

11 Q Certainly. "Toxicity of Herbicides:
12 Impact on Aquatic and Soil Biota and Human Health."
13 I don't know if that's right, "Biota," "and Human
14 Health"?

15 A Give me just a second if you could.

16 Q Sure.

17 A I'm getting there.

18 Q No problem.

19 A Got it.

20 Q Perfect. Would you be so kind as to read
21 the last paragraph on Page 401 starting with
22 "Jurado"?

23 A There is no Page 401.

24 Q I'm looking at the document. You're on
25 this particular exhibit, Chapter 16 of the "Toxicity

1 of Herbicides: Impact on Aquatic and Soil Biota and
2 Human Health," which is what was provided in the
3 link from Mrs. Graham.

4 A Are you looking at the numbers at the
5 bottom of the page or the numbers on the document?

6 Q The document number.

7 A All right. You're looking at the numbers
8 on the document not the numbers, the page number.
9 I've got it, 401.

10 Q Okay. And I will continue to use the
11 actual document numbers of the article itself for
12 ease of finding this information. Would you be so
13 kind as to read the last paragraph on Page 401 It
14 starts at Jurado, et al., 32, the last paragraph on
15 Page 401.

16 A Jurado, et al., listed the general
17 advantages and disadvantages of using herbicides.
18 In this list, the author cites as advantages, kills
19 unwanted plants, help crops grow since it eliminates
20 weeds that compete with crops for water, nutrients
21 and sunlight.

22 Q Keep going, ma'am, if you don't mind.
23 That's not the end of the sentence.

24 A It's the end of the page. Can be safely
25 used in plantations, while the manual or mechanical

1 removal processes of weeds can cause damages to
2 crops. Can be used in geographically close crops.
3 I will say we're not talking about crops in this
4 particular case.

5 Q Okay. Let's stop right there. Since you
6 made that statement, let me ask you a question. Are
7 you aware this entire document is focused on the
8 agriculture? It's a study about pesticides -- or
9 herbicides, rather, on agricultural properties and
10 the impact thereof? That's why this talks about
11 crops.

12 A Well, it may talk about crops, but it
13 also specifies the damages that herbicides can
14 cause, not only to people but to properties and the
15 areas in which it is applied.

16 Q Okay. We will continue to go through
17 that. Can you complete that reading, if you don't
18 mind, all the way to the end of that sentence that
19 you were reading, that you had just said "can cause
20 damages to crops," and then you made your input.

21 A Can be used in geographically close
22 crops. In most cases, only one application of the
23 herbicide is sufficient to control the weeds. I'd
24 like to stop there and say that it depends upon what
25 the weed is, because in many cases, with the

1 invasive exotics we have here in Florida, one
2 application is not sufficient to control the weeds.
3 I will continue reading.

4 Q Okay. So let me state: So therefore you
5 disagree with your own article that you provided as
6 evidence here?

7 A No. I disagree with the fact that this
8 -- in this particular case, in this article, it says
9 that only one application is sufficient to control
10 the weeds. That may be true in some cases. But in
11 the terms of the weeds that are present in this
12 pond -- and I would specify, for example, torpedo
13 grass, one herbicide application is not sufficient
14 to control torpedo grass.

15 Q Okay. Let's continue. The herbicide is
16 sufficient to control the weeds. Would you continue
17 reading from there, please, to the end of that
18 sentence?

19 A While other methods must be constantly
20 used -- and, again, I will say that depends upon
21 what weed is being treated -- are easy to use, have
22 fast action, are relatively inexpensive and are
23 economically more viable than manual removal,
24 non-selective herbicides can continue to eliminate
25 vegetation cover.

1 Let me go back to -- let me continue
2 reading; in areas intended for the construction of
3 residences and/or roads, to eradicate plants bearing
4 diseases, and since some herbicides are
5 biodegradable, they can become relatively inert
6 after some time.

7 Q Ms. Chayet, what does inert mean?

8 A It means non-functional, non-viable.

9 Q Okay. So it's stating in here in this
10 that, since some herbicides are biodegradable, they
11 can become relatively inert after some time. Is
12 that correct?

13 A That is not the case with the herbicides
14 that are typically used for treatments in freshwater
15 ponds in Florida.

16 Q Okay. Let's go further than that. Let's
17 go -- if you don't mind, would you go to Page 400 in
18 the article you provided to me?

19 A So we're going back up.

20 Q Yes, ma'am. We'll be jumping around
21 because I have a specific reason for this if that's
22 okay.

23 MS. GRAHAM: Can I just state for the
24 record that he stopped right before it says the
25 disadvantages? And so this is not --

1 MR. JUREN: You can make that statement
2 and we can go back and you can discuss it.

3 HEARING OFFICER: When it's your turn.

4 MR. JUREN: When it's your turn. The
5 issue is -- and the reason I did this -- I'm
6 glad you brought that up -- is because we call
7 this selective, selective support. That's in
8 her finding, selective support, which means
9 that she only pulled out the portions of the
10 article that supported her view.

11 I'm an intelligence officer. I do a lot
12 of data analysis. So, yes, you're more than
13 welcome to come back and talk to that. For
14 now, we'll do selective support based on the
15 article on my perspective. Okay.

16 Q Can you go to Page 400, please? And if
17 you will read the third paragraph.

18 A Give me a chance to get there, please.

19 Q I'm sorry. It's the third paragraph
20 under 1.1.

21 A That begins with "Before the
22 introduction"?

23 Q That's correct.

24 A "Before the introduction of selective
25 herbicides as an agricultural practice, the removal

1 of weeds was accomplished manually in an extremely
2 laborious form. Thus, the farmers sought other
3 forms to control weeds, such as integrating weed
4 control practices with crop rotation, tillage and
5 fallow systems."

6 Q So, once again, I wanted to highlight
7 that this particular article that you're referencing
8 using -- which you've already stated it doesn't
9 necessarily relate to aquatic use of herbicides --

10 A I did not state that. That's your
11 comment.

12 Q I apologize if I misunderstood what you
13 said. I thought you said it was different in
14 aquatic use of herbicides. If it's the same as
15 what's in here, that's fine with me.

16 A No. I did not say that. I said it
17 depends upon the product that is being used, the
18 conditions it's being used in, the sites it's being
19 used in.

20 Q All right. So you agree with the
21 statements in the article you provided?

22 A I agree with the statements as they are
23 written in this article.

24 Q Right, concerning agricultural, the
25 impact of pesticides, herbicides in an agricultural

1 area?

2 A I think you also need to look at the fact
3 that it does state in this specific article an
4 example of the disadvantages of herbicide usage.

5 Q I have several other questions based on
6 the articles you provided as evidence in support of
7 your perspective in your findings. Are you aware
8 of the -- and this is the abstract that I showed you
9 earlier.

10 A Which article, please?

11 Q The article, the abstract I showed you,
12 "Herbicide Exposure and Toxicity to Aquatic Primary
13 Producers."

14 A Okay. Please understand, I cannot see
15 what paper you showed or what you are looking at, so
16 give me a chance to get there, please.

17 Q Well, you won't be able to get there.
18 This is the abstract. And I apologize, I didn't
19 know I needed to have it in earlier. I've already
20 shown it to the hearing officer, and I'm just going
21 to state for you what this abstract states about the
22 article you provided as evidence. Okay.

23 The very first statement says, "The aim
24 of the present review is to give an overview of the
25 current state of science concerning herbicide

1 exposure and toxicity to aquatic primary producers."
2 However, I wanted to highlight this statement in
3 this abstract of the article you provided.

4 "Generally, there is no actual risk of waterborne
5 herbicides to aquatic primary producers." That's
6 the statement in the abstract of the article you
7 provided, concerning the article you provided.

8 I thought it was very meaningful that
9 we've had a long conversation about it. But in
10 reality in the actual abstract, which is a
11 consolidation, if you will, of what is in the
12 article, that statement, they found it important to
13 put that statement in the actual abstract.
14 Generally there is no actual risk of waterborne
15 herbicides to aquatic primary producers?

16 A May I respond?

17 Q Certainly.

18 A There are other articles in addition to
19 that one that actually state the reverse of that one
20 particular sentence.

21 Q However, those articles have not been
22 provided to us, have they? I didn't see them when I
23 read your articles.

24 A Well, the abstract that you're reading I
25 haven't been provided, so --

1 Q I fully understand that.

2 A -- it's difficult for me to be able to
3 follow what you're reading without having a copy.

4 Q That will be the last time I'm reading
5 off something that you don't have, Ms. Chayet, so
6 don't worry about that. Okay. Are you also aware
7 that in the 2013 article you provided, "Toxicity of
8 Herbicides: Impact on Aquatic and Soil Biota and
9 Human Health," it was specifically looking at the
10 herbicides in agriculture. But more importantly,
11 would you be kind to read on Page 401 -- I apologize
12 for taking you back again.

13 A You're going to have to give me time to
14 get back to the article, please.

15 Q No problem.

16 A I also want to specify that pesticides of
17 agricultural is a very generalized term, because a
18 lot of what's considered pesticides of agriculture
19 may or may not also be used in areas that you might
20 not identify as agriculture. What is the title of
21 the article, please?

22 Q We will be staying on this one for a
23 while, "Toxicity of Herbicides: Impact on Aquatic
24 and Soil Biota" -- am I saying that right, Ms.
25 Chayet? Biota?

1 HEARING OFFICER: Biota.

2 MR. JUREN: Thank you. Biota.

3 Q -- "Biota and Human Health."

4 A What page?

5 Q Page 401. And that would be starting
6 with the statement --

7 A Please give me a chance to get there.

8 Q By all means, I apologize. It will be
9 the fourth full paragraph down starting with "The
10 use of herbicides."

11 A Page 401?

12 Q That is correct.

13 A I'm on that page. The fourth paragraph?

14 Q The fourth full paragraph down starting
15 with "The use of herbicides"?

16 A Okay. Got it.

17 Q Could you read that for me, please, or
18 for the hearing officer? Pardon me.

19 A "The use of herbicides to control weeds
20 has been a common practice in global agriculture,
21 mainly with the objective to increase agricultural
22 production. However, when these chemicals are used
23 in an uncontrolled manner, they can cause impact on
24 non-target organisms, especially those that live in
25 aquatic environments."

1 Q Okay. I would like to highlight two
2 things here. One is, it says when these chemicals
3 are used in an uncontrolled manner. Isn't the
4 specific purpose of an EPA labeling to ensure you
5 utilize those products in the appropriate manner?

6 A That is what the intention is. However,
7 unfortunately, a lot of times, herbicide
8 applications are done illegally and without the
9 appropriate permits in place.

10 Q Okay. I would agree with that. As a
11 matter of fact, I would agree with the fact that we
12 have significant problems where laws are not being
13 followed and end up with people dying based on DUIs.
14 I would agree with that, however, I would not stop
15 everyone from driving a car until they've shown me
16 that they have an alcohol problem.

17 Ms. Chayet, I know you highlighted the
18 potential impact of the use of herbicides to human
19 health in your findings. In the 2013 article you
20 provided -- back to the same article -- could you
21 read Paragraph 2 on Page 401, the first sentence,
22 the first full paragraph on Page 401?

23 A It starts with "Many agrochemicals"?

24 Q Yes, ma'am.

25 A "Many agrochemicals are very toxic

1 substances whose absorption in man are almost
2 exclusively oral and can also occur by inhalation or
3 dermally. As a consequence" --

4 Q You can read the rest of it if you so
5 desire.

6 A That's fine. I'm kind of losing my
7 voice.

8 Q Ms. Chayet, doesn't that mean that an
9 individual would have to swallow, breathe or touch
10 the herbicide to have any absorption? Is that what
11 that states?

12 A Those are three of the mechanisms of
13 toxicity in terms of humans.

14 Q Right. And it says "almost exclusively"
15 in that statement. Is that what you found? That's
16 what the article states.

17 A Those are the major routes of entry for
18 herbicides or pesticides into your body.

19 Q Ms. Chayet, do you know the distance from
20 the edge of my property to the edge of Mr.
21 Anderson's property?

22 A I have not measured it, but it looks to
23 be from edge to edge approximately 75 to 100 feet.

24 Q Our properties are 75 feet wide, so that
25 would be correct from the very edge of my property

1 to the very beginning of his property and up to his
2 house where he actually lives, unless he was
3 standing at the edge of the pond, it would be closer
4 to 125 or 150 feet.

5 Ms. Chayet, in the same article, are you
6 aware that most of the studies that are cited in
7 this article that you provided us today are from
8 areas outside of the United States where they are
9 not subject to labeling guidelines for the
10 application of herbicides?

11 A I do not think that that is exclusively
12 true, and a herbicide is a herbicide.

13 Q No, that wasn't my question, ma'am. I
14 apologize. I'm stating that most of the studies
15 cited in the article you provided are based on sites
16 outside the United States where they're not subject
17 to the labeling guidelines of the EPA for the
18 application of herbicides. Are you aware of that?

19 A There is reference to usage around the
20 world. There's also considerable reference to usage
21 in the United States.

22 Q We'll go through this. In the end, I
23 would like you to be thinking -- because I've read
24 your article. I didn't find specific to the United
25 States, it talks about midwest United States but

1 nothing specific.

2 However, specifically the findings are
3 based on studies of herbicide impacts in locations
4 as far away from the EPA's control as Italy. And if
5 you would be kind enough to go to Page 407, the
6 first full paragraph down, and read the first
7 sentence of that paragraph, if you wouldn't mind.

8 A That does reference Italy.

9 Q Would you read that for us?

10 A Excuse me?

11 Q Yes, if you would read that. Thank you.

12 A Guzzella, et al., did a survey on the
13 presence of herbicides in groundwater in a highly
14 cultivated region of northern Italy.

15 Q And, similarly, if you would go to 408,
16 the very next page, the first line, the first
17 complete sentence which starts at the end of the
18 first line, "In a similar study," read that
19 sentence, please.

20 A "In a similar study carried out by Liu,
21 et al., it was observed that the effect of the
22 herbicide butachlor (most used herbicide in rice
23 planting in Taiwan and Southeast Asia) on the
24 organism" -- I'm not quite sure how to pronounce
25 that.

1 Q And then on Page 408, fourth full
2 paragraph starting with, "According to Bannink."

3 A All right. Give me a moment, please.

4 Q Yes, ma'am. It's about halfway down that
5 paragraph, it starts on the left, "According to
6 Bannink."

7 A Which paragraph, please?

8 Q The fourth full paragraph down.

9 A Okay. I'm sorry.

10 Q Okay. That's okay.

11 A I'm not down there yet.

12 Q No problem.

13 A Okay.

14 Q "According to Bannink," it starts with
15 that.

16 A "About 40% of the drinking water from
17 Netherlands is derived from surface water."

18 Q You can go on.

19 A We are missing the sentence that
20 addresses the drinking water samples of the midwest
21 region of the United States.

22 Q If you want to -- and I don't want to
23 keep you from doing that. If you want to go back up
24 and evaluate that, if you want to read those two
25 things. If you want to read that first part, that's

1 fine, "Evaluate the presence of two herbicides."

2 A Evaluate.

3 Q Go ahead.

4 A "Evaluate the presence of two herbicides
5 as well as their by-products in drinking water
6 samples in the Midwest region of the United States."

7 Q Okay. So that was one statement about
8 the United States. Okay. If you will go down to
9 Page 409, first paragraph, first sentence, first
10 full paragraph, first full sentence on Page 409.

11 A Would you read the beginning to make sure
12 I'm on the right place, please?

13 Q Absolutely. This one is "A study
14 conducted," the first full paragraph, the first
15 sentence of the first full paragraph on Page 409, "A
16 study conducted."

17 A Right. Can I just say that this
18 particular sentence refers to Brazil?

19 Q Yes, if that is okay --

20 A I'm sorry. I am losing my voice.

21 Q That's okay. I won't have you do that
22 anymore. I certainly appreciate your patience with
23 me as I went through this. I'll highlight one more,
24 and that's further down the page, which is two more
25 paragraphs below. I'll actually read it for you.

1 It's the last sentence of that paragraph.

2 "Still considering the marine ecosystem,
3 Lewis, et al., verified that the runoff of
4 pesticides from agricultural influence, area
5 influence the health of the Great Barrier Reef in
6 Australia and can disturb the ecosystem."

7 So I wanted to highlight that this
8 article you provided about the effects of
9 herbicides/pesticides use is a worldwide review. It
10 is not specific to the United States. It is not in
11 areas under the auspices or control of the
12 Environmental Protection Agency or were those folks
13 that did this responsible to follow the guidelines
14 of the EPA.

15 A It lists the United States.

16 Q And I will address that since you brought
17 that up. As a matter of fact, only three times are
18 the EPA and the United States mentioned in this
19 article. There on Page 4.01 where it states: "Due
20 to the widespread use of triazine herbicides in the
21 agriculture and therefore its high exposure
22 potential for humans, the United States
23 Environmental Protection Agency has conducted a
24 special review on the published and non-published
25 data of several triazine herbicides."

1 And, again, on Page 421, where it states
2 that, "According to several international agencies,
3 including the Environmental Protection Agency,
4 Development for the Environmental Assessment Center
5 of the United States and IARC Monographs (the
6 International Agency for Research on Cancer), the
7 herbicide atrazine, for example, was classified as a
8 chemical agent probably carcinogenic to humans,
9 although the basis for this conclusion is only
10 evidenced in other animals. Due to the fact that
11 the atrazine induce mammary tumors in female
12 Sprague-Dawley rats, the Peer Review Committee of
13 the EPA Office of the Pesticide Program also
14 concluded that atrazine should be considered in the
15 Possibly Carcinogenic to Human Group. However, the
16 EPA has classified this herbicide as a compound
17 probably non-carcinogenic to humans."

18 Therefore, Ms. Chayet, my question is:
19 Would you agree that the findings of this article
20 are not based on the impacts of herbicides applied
21 in accordance with the EPA pesticides labeling
22 instructions that must be followed in the United
23 States?

24 A I can't really say that. I want to go
25 back to your comments about --

1 Q Ms. Chayet, how can you not state that?

2 MS. GRAHAM: I would like to object.

3 You're badgering the witness at this point.

4 MR. JUREN: I'm sorry. I apologize.

5 HEARING OFFICER: Just ask your

6 questions. Let's not start a dialogue between

7 you.

8 Q Ms. Chayet, let me be more clear. Ms.
9 Chayet, would you agree that the article that you
10 provided for us included areas external to the
11 auspices and governance of the Environmental
12 Protection Agency and therefore may not show the
13 actual impacts that would have taken place had those
14 areas been under the evaluation or under the
15 auspices and control of the EPA and those herbicides
16 being appropriately utilized?

17 A I will say the article does cover areas
18 outside of the United States. That's as far as I
19 will go. I would like to go back to your comments
20 about rats because you had a reaction about rats.

21 Q About rats? Yes.

22 A Rats. Rats are used to test these
23 pesticides because rats have a very similar reaction
24 to pesticides as do humans, and rats are used to
25 determine what's called the LD50, which is a number

1 that is assigned to pesticides. It addresses how
2 much of a pesticide is necessary to kill -- a lethal
3 dose, that's where the LD comes from -- 50 percent
4 of a population of test rats. That's why it's
5 called LD50, and there is a very close correlation
6 between what a pesticide would cause in a rat to
7 what a pesticide caused in a human. That's why rats
8 are used in studies.

9 Q Thank you for clarifying that. Now a
10 follow-up question based on that statement. Are
11 those rats utilized in the assessment of this by the
12 Environmental Protection Agency?

13 A I don't know what rats are used in what
14 testing of what pesticides. That is very specific
15 to each pesticide that goes through a testing
16 process before requesting a registration from the
17 EPA.

18 Q Okay. Thank you. Ms. Chayet, I notice
19 that you've been and may still have a certified pest
20 control operator's license. Is that correct?

21 A Yes.

22 Q When you were applying pesticides, what
23 did you use to determine the best way to apply those
24 pesticides?

25 A I applied them according to the product

1 label.

2 Q Which was provided by?

3 A You know the answer to that. It has to
4 be registered through the EPA before it can be
5 applied.

6 Q Okay. So while you were doing those
7 activities as a licensed pest control operator, you
8 followed the labeling of the product that was
9 provided by the Environmental Protection Agency.
10 Correct?

11 A I did. I can't speak to anybody else
12 because there are a lot people who do not apply
13 legally.

14 Q Right. And when they do that, they're
15 breaking the federal law. Is that correct?

16 A That's correct. Unfortunately there is
17 insufficient enforcement to be able to have people
18 come into compliance with appropriate application of
19 pesticides.

20 Q Do you agree that following the labeling
21 instruction provided by the EPA for use -- would you
22 expect them to be -- wait a minute. I apologize.

23 A I would also like to mention that the EPA
24 has registered a number of pesticides that they
25 later found out were problematic in terms of

1 diseases and issues with humans.

2 Q Right.

3 A Certainly there have been a number of
4 products that have been taken off the market after
5 they were registered because they found out that
6 they caused death, injury, illness, tumors, cancers,
7 et cetera, in people.

8 Q And I understand that. We can thank the
9 Environmental Protection Agency for continually
10 researching and re-evaluating those herbicides and
11 pesticides so that they would be, in fact, removed
12 from the market? Is that correct? They are the
13 ones that remove those from the market. Is that
14 correct?

15 A They remove them from the market after
16 other people have brought to their attention that
17 there was an issue with that product.

18 HEARING OFFICER: How are you doing, Mr.
19 Juren? Are you almost done?

20 MR. JUREN: I am getting close. I know
21 I'm wearing you down, I apologize. We're
22 almost done.

23 Q Ms. Chayet, do you know at what level,
24 academic level, the writings of the label on a
25 herbicide or pesticide are provided --

1 A I'm sorry? I did not hear that.

2 Q Ms. Chayet, I'll try again. Ms. Chayet,
3 do you know what grade level the instructions
4 provided by the Environmental Protection Agency on
5 herbicides is written at?

6 A Typically it's written at an eighth grade
7 level.

8 Q Eighth grade level. Okay. So, Ms.
9 Chayet, based on my introduction that I have a
10 master's degree from the Naval Post-Graduate School,
11 do you think I would be capable of understanding
12 those instructions and applying the pesticides
13 appropriately based on the labeling of an
14 EPA-approved pesticide or herbicide?

15 A I can't make a judgment on that. I have
16 not seen you apply anything. I do know there have
17 been illegal applications. So if you really want an
18 answer to that, I don't think you're going to like
19 my answer.

20 Q Actually I would be glad to hear your
21 answer, Ms. Chayet, and then I would ask you what
22 you're basing that on. But, please, give me your
23 answer.

24 A I cannot address how you as an individual
25 might apply since I know there have already been

1 illegal applications done at that pond. If I look
2 at that as a track record, I would wonder about the
3 ability to properly apply a herbicide into the pond.

4 Q Okay. Since you brought that up, Ms.
5 Chayet --

6 A I would also -- can I finish, please?

7 Q I apologize.

8 A I would also wonder or ask how any
9 individual would be able to keep that herbicide
10 applied to a small sliver of waterbody within the
11 confines of an imaginary property line in that
12 waterbody.

13 HEARING OFFICER: I'm going to call a
14 time out.

15 MR. JUREN: Okay.

16 HEARING OFFICER: We're getting well
17 beyond. You're doing like a cross-examination
18 of her testimony. You're starting to have this
19 back and forth. You know, ask a question,
20 answer a question. Don't engage him in his
21 views of the universe or vice versa, please.

22 MR. JUREN: Gotcha. Okay. Understand.
23 Thank you.

24 Q I will highlight, based on your last
25 statement, Ms. Chayet, that even though it has been

1 highlighted in here that I treated the pond before
2 having any permit, I used a licensed aquatic
3 contractor to treat the pond. I did not do that.

4 So I utilized a licensed -- so therefore
5 I was trying to ensure that I was following the
6 rules as I knew them at that time by utilizing a
7 licensed aquatic herbicide contractor. I didn't
8 treat the pond individually.

9 A I understand.

10 Q So I did not treat the pond
11 inappropriately. Okay.

12 A The licensed contractor treated it
13 inappropriately.

14 HEARING OFFICER: Ms. Chayet, please keep
15 your opinions to yourself.

16 BY MR. JUREN:

17 Q Ms. Chayet, you mentioned earlier that
18 you had visited the site. And we spent some time
19 putting pictures in of the native vegetation at the
20 location. So you also are aware that I, in fact,
21 had contracted an aquatic service provider for
22 treatment of the pond shared by the neighbors with
23 the neighbor's knowledge.

24 You stated that you felt confident that
25 wetlands would be negatively impacted by herbicide

1 treatment of the pond and littoral shelf. That's in
2 your statement. I admit that I did have an aquatic
3 maintenance service for the pond at the time and I
4 was unaware of the need for a permit. But during
5 this period of time, the entire pond was treated
6 with herbicides for over a year. Actually that site
7 has been treated for multiple years by a contracted
8 aquatic service.

9 During this period of time the entire
10 pond was treated with herbicides for this period,
11 were you able to find any documented evidence of
12 negative downstream impacts to the environmentally
13 sensitive areas of Bell Creek or the Alafia River,
14 which you have highlighted numerous times today,
15 that have been traced back to the treatment of this
16 pond during this period?

17 A I have not studied the specific potential
18 impact of all sites since I do not know what product
19 you used -- or, excuse me, what product your
20 contractor used.

21 Q Okay. So just so I understand. Today
22 you highlighted the negative impacts of the use of
23 herbicides in Pinellas County which you witnessed.
24 You have highlighted today several times, as has the
25 counsel, that we need to look at this specific site

1 to understand the impacts.

2 A Yes.

3 Q In this particular case, I'm stating that
4 this pond has been treated by herbicides for
5 multiple years and, yet, there appears to have never
6 been any indication of negative impacts downstream
7 from this. And you did not research to find out
8 whether or not there had been any negative impacts
9 from this particular location and treatments at this
10 pond?

11 A I did not research specific treatments
12 you did. Excuse me. I would say your contractor
13 did. I apologize for keep referring to you.

14 Q That's all right.

15 A No. I did not research that.

16 Q Ms. Chayet, don't you think that that
17 would have been the documented impacts during this
18 period, would be the best evidence of negative
19 environmental impacts specific to this location,
20 seeing how this is a specific location we're talking
21 about and you're talking about the downstream
22 impacts, yet we have no indication and no evidence
23 presented today to show that there have been any
24 negative impacts to that area or downstream from
25 that pond based on treatments over many years?

1 A In my training and experience, I am aware
2 of the three most commonly used herbicides for
3 treatment in aquatic waters. And all of those, as I
4 mentioned earlier, do have negative or adverse
5 impacts. They bioaccumulate in the soil. They move
6 throughout an entire waterbody. And when there is
7 discharge off site, they will move off site.

8 Q Okay. And in this case, as you stated
9 earlier, this is a global issue and the study you
10 provided was a global perspective. I'm stating that
11 if we actually had empirical data on this particular
12 site and the outflow and the potential impact of
13 downstream use of herbicides in the entire pond for
14 multiple years -- I'm asking to treat 75 foot of
15 that pond.

16 Wouldn't it seem logical that if you were
17 going to have downstream impacts, they would have
18 been apparent by now based on the fact the entire
19 pond has been treated for multiple years?

20 A They may or may not be. And going back
21 to your 75 feet, I will again state, an herbicide
22 treatment done 75 feet will not remain in 75 feet.

23 Q And I understand that, Ms. Chayet. But
24 I'm stating that when we were treating the entire
25 pond, we were treating the entire pond, not just 75

1 foot that could spread through the pond. We
2 actually treated with herbicide the entire pond.
3 And yet we have seen no negative impacts. There has
4 been no negative impacts to the environment or the
5 sensitive areas or Bell Creek or the Alafia shown in
6 the hearing today based on the treatment of that
7 pond.

8 That should -- if I were making the
9 argument, that would be the exact thing I would
10 bring in here to show negative impacts from the pond
11 since it has been stated over and over that I
12 treated the pond. That would be a very good
13 empirical data point, I would think, to be assessed.

14 MR. JUREN: Ms. Chayet, I want to thank
15 you for your time and what you do to protect
16 the environment, all the efforts you've done.
17 I know today it's been very -- an interesting
18 back and forth, but I truly do appreciate the
19 fact that you try to take care of the
20 environment. I mean that seriously. Thank
21 you for your service there, and thank you for
22 your time. I don't have any more questions at
23 this time.

24 HEARING OFFICER: Ms. Graham, do you have
25 any redirect?

1 MS. GRAHAM: I do.

2 REDIRECT EXAMINATION

3 BY MS. GRAHAM:

4 Q I have several quick questions for you.
5 I know you've been kept a very long time, Ms.
6 Chayet. Thank you very much for your patience.

7 Mr. Juren just spoke about the history of
8 negative impacts and whether or not there had been
9 any study. You reviewed the EPC's documents on this
10 permit. Has the EPC done any study as far as
11 potential negative impacts from the previous --

12 A No.

13 Q No?

14 A They have not done any studies as far as
15 any potential adverse impacts nor have they done any
16 studies regarding cumulative effects.

17 Q Whose responsibility is it to look at
18 these least environmentally adverse impacts?

19 A Well, if the EPC is issuing the permit,
20 they have some responsibility for that, certainly in
21 advance of issuing a permit to look at the potential
22 adverse impacts.

23 Q It's not your responsibility to -- it's
24 not your burden, is it?

25 A No, it is not.

1 Q It's actually the applicant's burden to
2 show that he's met the criteria. Isn't that right?

3 A Yes.

4 Q Just a couple really other quick
5 questions. A herbicide applied in one location may
6 be okay. Is that right? There may be some places
7 where herbicides can be applied and there not be
8 significant environmental impacts?

9 A I would agree with that, yes.

10 Q Would you say that this location is one
11 of those?

12 A No, I do not believe that it is.

13 Q Okay.

14 A Again, because there are downstream
15 conveyance of herbicides to off site.

16 Q Okay. And Mr. Juren took great lengths
17 to read certain sections of an article that you had
18 submitted among other articles. Can you just tell
19 me what was the purpose by which you submitted this
20 article, "Toxicity of Herbicides: Impact on Aquatic
21 and Soil Biota and Human Health"? What role did
22 this have in your analysis for you being here today?

23 A It addressed essentially the impacts of
24 herbicide treatment in aquatic environments and the
25 impacts that it could potentially have or does have

1 on human health, also the impacts it has on soil
2 biota goes back to my having discussed the most
3 common herbicides used for treatments in aquatic
4 environments here in this state all have documented
5 evidence of being found in the soil.

6 Q Well, an article may have specific
7 examples. That's not prescriptive for every
8 situation. Is that correct?

9 A That's correct.

10 Q Mr. Juren spoke about human impacts of
11 pesticides. What does 1-11.09(1)© speak to?
12 Doesn't it speak to the least adverse environmental
13 impacts?

14 A Yes, it does.

15 Q It doesn't speak to human impacts in the
16 plain language. Right?

17 A Correct.

18 Q Last but not least, Counsel Zodrow had
19 brought to our attention that there had been a
20 mistake as far as a document that had been
21 submitted. I'd like to now submit this document, it
22 is Exhibit 5, into the evidence.

23 HEARING OFFICER: Exhibit 5 from where?

24 MS. GRAHAM: From the documents that I
25 had previously sent to EPC, if I can find it.

1 I do not have a printed copy of it. It is a
2 Boyette Springs Master Drainage Plan.

3 MR. ZODROW: I don't have a paper copy of
4 it either.

5 MS. GRAHAM: May I show it to you with my
6 screen? And then I'll show it to you and I can
7 e-mail you and submit it?

8 HEARING OFFICER: Mr. Zodrow, are you
9 okay with that?

10 MR. ZODROW: To me, it's irrelevant. I
11 have no objection to it, you can look at it.
12 To me it's still irrelevant. I'm going to
13 object. Irrelevant.

14 HEARING OFFICER: Get it identified.

15 MR. ZODROW: Just for the record, it was
16 relevant to the EPC to determine that the
17 wetland was a jurisdictional wetland. That's
18 what our testimony from our expert had
19 testified regarding that.

20 HEARING OFFICER: That was Ms. Lee.
21 Correct?

22 MR. ZODROW: Yes, Ms. Lee. So there was
23 a review. We didn't introduce it into
24 evidence. We had mentioned it. But to us,
25 it's irrelevant because that's the only purpose

1 it served, was to establish that it was not a
2 permitted stormwater pond.

3 Had it been a permitted SWFWMD stormwater
4 pond, it would not have been a jurisdictional
5 wetland, other surface water, thus a permit
6 wouldn't have even been required, but because
7 we don't regulate things in stormwater ponds --
8 that was the purpose that it served. I don't
9 mind it coming in as evidence, but we object to
10 any relevance beyond that.

11 MS. GRAHAM: And the purpose by which we
12 are admitting it is complementary to the
13 photograph that Ms. Chayet had taken of the
14 stormwater structure, this is support, there's
15 documentary support that there is indeed some
16 kind of structure there and that there is a
17 differential of elevations.

18 HEARING OFFICER: Okay. It will be
19 Exhibit No. 27. And you need to send me a
20 copy.

21 (Appellant's Exhibit 27 received in
22 evidence.)

23 MS. GRAHAM: Yes, Officer. Ms. Chayet,
24 thank you very much. I have no further
25 questions.

1 THE WITNESS: Thank you. I would like to
2 take a moment to thank everybody present for
3 allowing me to testify virtually. I very much
4 appreciate that.

5 MS. GRAHAM: I have Mr. Anderson. Can we
6 take a five-minute break?

7 HEARING OFFICER: Sure.

8 (Recess from 3:07 p.m. to 3:11 p.m.)

9 * * * * *

10 JAMES ANDERSON,
11 been duly sworn to tell the truth, the whole truth,
12 and nothing but the truth, was examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GRAHAM:

16 Q Good afternoon. What is your name?

17 A First name is James, J-a-m-e-s, last name
18 is Anderson, A-n-d-e-r-s-o-n.

19 Q Before we get started, Mr. Anderson, is
20 there anything you would like to say about your
21 voice?

22 A I have a voice disability called
23 Spasmodic Dysphonia or Laryngeal Dystonia. You'll
24 hear a lot more about that because we have a
25 candidate that has that problem running for

1 president right now.

2 Q Where do you live?

3 A I live at 10514 Sedgebrook Drive in
4 Riverview, Florida 33569.

5 Q How long have you lived there?

6 A Moved in in June of 2018.

7 Q Do you have any pets?

8 A I have one dog.

9 Q Did you have any other pets?

10 A I had two dogs.

11 Q Do you have a pond in the back of your
12 yard?

13 A I do, correct.

14 Q Have you ever seen anyone spray the pond
15 before?

16 I have. And I would like to correct an
17 earlier statement. The first company that sprayed
18 when I moved into the house, we had no idea who they
19 were. They just drove six-wheelers across our back
20 yard. And I was actually on the phone with my
21 nephew, and I won't repeat what he told me to do.

22 But we had no idea who they were. They
23 had no permission to come on my property. They had
24 no notification to any of the property owners from
25 me down that I'm aware of that they were going to

1 spray. They just came on our property and sprayed.

2 Q After the pond was sprayed, what did the
3 pond look like?

4 A So the initial company did not do what I
5 called the suction. They just kind of sprayed.
6 They came in in jon boats and they sprayed the
7 edges. That's before we as a group trimmed all the
8 stuff on the other side of the pond.

9 Q Now at some point you made a report to
10 the EPC about spraying that didn't appear to be
11 permitted. Is that right?

12 A I did. Once my second dog got cancer, I
13 questioned her surgical oncologist at the University
14 of Florida about why did both my dogs get cancer of
15 the mouth or in the mouth within a three-month
16 period.

17 And her comment was, "Do you live on a
18 golf course?" At that very moment, I remembered the
19 six-wheeler from the second company pumping water
20 into the tank on the six-wheeler and then spraying
21 it out throughout the entire pond. So it actually
22 changed the color of the pond itself, and then it
23 also sprayed the edges of the pond.

24 Q What was the outcome of your complaint to
25 the EPC?

1 A It took a long time in the initial
2 complaint, I felt, because I continually provided
3 documentation to the original -- I'll call him an
4 inspector. And finally because the neighbor that
5 lives in between us told me the company was coming
6 back out shortly, I called the inspector again, and
7 he finally wrote the letter that we submitted on
8 saying discontinue and contact me within three days.

9 Q Okay. Were you given prior notice to
10 these unpermitted spraying activities?

11 A No. We had no prior notice. And
12 actually I have an e-mail here to Mr. Juren, and I'm
13 going to read the second paragraph. "I'm going to
14 keep cleaning my area by hand. I actually enjoy it.
15 I pick up the bottles and trash while cleaning and
16 hope to make my area of the pond very clean and the
17 pond bottom well raked. It is also good for my
18 diabetes to get up off of my" -- and I'll not use
19 that last word -- tail.

20 Q And you wrote that?

21 A I wrote that, yes.

22 Q Did you get any response from Mr. Juren?

23 A No. And that was sent on April 4th, 2020
24 at the 8:38 a.m.

25 Q After the first complaint that you

1 mentioned in 2021, did something happen again?

2 A It did. So what I noticed was
3 Mr. Juren's mother's property was brown on the
4 edges. Mr. Juren's property was brown on the edge,
5 on the house-side edge, and then the neighbor in
6 between Mr. Juren and I, Mr. Greco's, was brown.

7 So when I called and continually called
8 the inspector, I know he said, "Call us if there's a
9 problem." Well, I did. And trying to get them out
10 was difficult. So I would continually call.
11 According to the inspector, he kept getting excuses
12 from Mr. Juren why he couldn't come out to the
13 property.

14 And I finally said, "If you wait long
15 enough, it will grow back." So he came to my
16 property and observed Mr. Greco's, Mr. Juren's and
17 Mr. Juren's mother's. And Mr. Greco came out and
18 talked to us, and he admitted that he had sprayed
19 his property. But no one ever admitted to who
20 sprayed Mr. Juren's property or his mom's.

21 Q Have you seen any wildlife in the pond?

22 A I've seen a lot of wildlife in the pond,
23 alligators. I've seen sandhill cranes, and I
24 realize the babies, we're not allowed to use them in
25 this right now, but we only found out about those

1 just not even two weeks ago because they're so small
2 that I first took a picture of them Sunday, and the
3 final documentation was due Friday. And I know we
4 submitted the pictures that Friday.

5 But we didn't even know they were there.
6 And how were we supposed to? They weren't born when
7 some of this activity we were supposed to get done
8 was being done. So how do you -- I'm sorry.

9 Q Do other neighbors want to spray the
10 pond?

11 A Some do, yes.

12 Q Actually, let me rephrase that because I
13 want to make sure it's an okay question. Have you
14 people spoken to you about wanting to spray the
15 pond?

16 A I've seen e-mails from Mr. Greco that
17 said that others will be. I know that there was an
18 effort when Mr. Greco was trying to pull a master
19 permit for the pond that multiple people signed up.
20 Of course, Mr. Juren's mom is going to because he's
21 partial owner of that property -- or at least, so
22 there will be multiple properties, yes.

23 Q I have one last question for you,
24 Mr. Anderson. How do you want the situation to be
25 resolved?

1 A Because of the potential impact on other
2 properties, I -- one day when they were spraying I
3 had my windows open and I could smell it coming
4 through my window and the cumulative effect.
5 Because there's been so much spraying that's gone on
6 in the past, we don't know what that cumulative
7 effect is, and unfortunately the EPC is not doing
8 any research on that. So I would rather not use
9 herbicides.

10 Q And if they use manual or mechanical
11 removal that was environmentally sensitive, would
12 you have any problem with that?

13 A I supported that, even though it was
14 unpermitted, Mr. Greco did weed-whipping from in
15 between the two citations issued by the EPC. He
16 weed-whipped pretty much the whole pond, and it
17 didn't take him that long to do. So this isn't that
18 hard of a thing to do. It really isn't. And I
19 realize Mr. Greco wasn't doing things under EPC.

20 Q One last question. Do you have asthma or
21 any other health conditions?

22 A I have multiple health conditions. I
23 have Spasmodic Dysphonia that affects my voice and
24 sometimes my breathing. I retired from the
25 Arlington County Virginia Fire Department on asthma

1 and reactive airways disease. I have diabetes that
2 if I don't get it under control by August, I will be
3 mandated by my doctor to start taking medication. I
4 had family history of cancers. So exposures to me
5 are not a good thing.

6 Q And how many dogs do you have now?

7 A I have one now.

8 Q And are you concerned about impacts --

9 A He already had, I don't know if the
10 correct term is, a tumor or a mass cut out of his
11 tongue. So what they had to do is cut a circle
12 around a mass out of his tongue. So both dogs had
13 cancer of the mouth.

14 And I realize what you said in there,
15 that there that herbicides are -- and the problem
16 with Labradors -- and I told Mr. Greco this -- they
17 eat poop. You know, the birds are in the pond,
18 they're coming up and they've got the toxins or the
19 herbicides in them. Maybe that's too much
20 information.

21 Q Mr. Anderson, have you ever seen the
22 water in the pond flow over to the other side of the
23 bank?

24 A You asked that. Only once, and that was
25 when there was a lot of rain for a lot of days, it's

1 just so rare, I've only next month been there five
2 years. I've owned the property. I had the house
3 built. I signed the contract in '99 but I've only
4 lived there since '18.

5 Q But you have seen it once?

6 A Yes.

7 Q Is there anything else that you want
8 everyone to know? You are the appellant in this
9 case, it's your time if you have any other
10 statement.

11 A I'm going to take a minute and read my
12 notes, if that's okay. Again, I just want to bring
13 up the baby sandhill cranes because we didn't have
14 time, they didn't exist when we would have had to
15 get that information in.

16 My understanding is these are protected
17 and yet the EPC is not going to protect them. This
18 is a wildlife habitat. I've seen a coyote on my
19 property. I've had wild boar on my property because
20 they rut up the ground, turtles, all kinds of birds.
21 The sandhill cranes are there. I've seen -- I've
22 never babies as small as this year. But I've seen
23 baby sandhill cranes in prior years when I lived
24 there. I can't state with the facts really that
25 they've bred on the pond, but these babies seem to

1 be on the pond right now.

2 Q Okay. Anything else?

3 A I don't want those babies to be killed by
4 herbicides.

5 MS. GRAHAM: No further questions. Thank
6 you very much.

7 THE HEARING: Your witness, Mr. Zodrow.

8 MR. ZODROW: I do not have any questions.
9 Thank you.

10 HEARING OFFICER: Mr. Juren, do you have
11 any questions?

12 CROSS-EXAMINATION

13 BY MR. JUREN:

14 Q Mr. Anderson, you and I have lived next
15 to each other for a couple years now?

16 A Two doors down.

17 Q Two doors down. And to date, I don't
18 think we've ever had a cross word with one another?

19 A Not one.

20 Q And I don't ever intend to have one.

21 A And I don't either.

22 Q And I understand your perspective. In
23 your statements today, you brought up again the loss
24 of your dog and the current dog that you have has
25 mouth cancer. And I'm sorry that that's the case.

1 However, it keeps implying that I am
2 responsible for that problem because I had a
3 contractor treating the pond. In reality, that's
4 sort of a defamation of character on me. There's no
5 been no affidavit, there's been no proof, there's
6 been no evidence provided that those problems that
7 your dogs have were caused by the treatments on the
8 pond other than your assessment based on a comment
9 made by a veterinarian.

10 I would humbly ask that you quit stating
11 that because there is no proof to that. I would
12 never do anything intentionally to hurt your house.
13 I want you to know that. I think you do know that.
14 But I want to make sure you understand today that
15 that's the truth, I wouldn't do that. And I would
16 prefer that you didn't imply that I caused that
17 problem.

18 A Well, if you got that I implied that, I
19 didn't. What I did imply is, my training in the
20 fire department was also, I was paramedic, I was
21 trained by George Washington University. And one of
22 their many exposures, you know, it's the link to the
23 exposure, the immune system of the -- we study
24 humans, but of the animal. There are five major
25 factors. Unfortunately I don't remember all five.

1 But my dogs were old. Hershey just died.
2 She was thirteen. She died right before Christmas.
3 So the immune system gets worse as we get older.
4 It's just a fact, and it's true in people, it's true
5 in dogs. And so any exposure -- and then to have it
6 be done the way it was without permits, and then the
7 first company I continually told them to stay off my
8 property and they continually came back on my
9 property. So it's not like I didn't tell them.
10 It's not like I didn't approach them.

11 And, you know, on the final stage, when I
12 told you -- because I was walking both dogs, and you
13 pulled up the street, you stopped. And I said,
14 "Don't allow your contractors to come on my property
15 anymore."

16 You said, "Well, what's wrong?"

17 I said, "Both these guys have cancer."
18 So it's not so much whether it caused the cancer,
19 but it didn't help the cancer.

20 Q Got it.

21 A So any exposure, when you have a body
22 like mine that has so many problems with it, some of
23 it from the fire department but some of it from the
24 diabetes, which is probably my fault -- but I am
25 where I am right now. So anyway, did I answer your

1 question?

2 Q Yes.

3 HEARING OFFICER: Are you done?

4 MR. JUREN: No. I just have one more
5 question.

6 HEARING OFFICER: Okay.

7 Q It's been stated several times today.

8 And, Mr. Anderson, you stated that we have lots of
9 wildlife around that pond?

10 A Yes, we do.

11 Q And that's something I think that we both
12 enjoy in the pond. And I think that -- would you
13 state that there has been any change in the amount
14 of wildlife around that pond over the last three
15 years that you've been living there?

16 A Only the alligator. If you remember --

17 Q I do remember the alligator.

18 A It's about a six-foot alligator.

19 Unfortunately it wasn't brought up by Debbie. But
20 we did, there was research done that looked at
21 exposure of herbicides on alligators. So the
22 alligator that I told -- when he was spraying with a
23 sprayer in the front yard -- Mr. Greco, I said,
24 "There's an alligator on your property," but it
25 looked really sickly. It was about six feet, so

1 that would usually be 200, 300-pound gator and it
2 was about 100 pounds. So it looked very sickly.
3 Was that caused by the herbicide? I don't know.

4 Q I guess my question is: Other than the
5 gator, we've had a plethora of wildlife throughout
6 our pond over the last, since I've been there, 20
7 years. And I have not seen a decrement in the
8 number of wildlife animals that are in our back
9 yard. Mr. Greco calls it the zoo. The point is:
10 We have not seen a decrement in the number of
11 wildlife animals that are in our back, in our pond
12 area.

13 A I don't know if I would agree with that.
14 There's been no study done on that.

15 Q Just based on your perspective of what
16 you see.

17 A My perspective is it's gotten better
18 since the herbicide treatment has been stopped, and
19 that's my perspective.

20 MR. JUREN: Ma'am, I don't have any other
21 questions. Thank you very much, Mr. Anderson.

22 HEARING OFFICER: Thank you. We need to
23 talk about process.

24 MR. ZODROW: Should we do closing
25 statements?

1 HEARING OFFICER: Closing statements,
2 yes.

3 MR. ZODROW: I will be very brief, I
4 promise. Should I go first?

5 HEARING OFFICER: Yes, why don't you go
6 first.

7 MR. ZODROW: I could almost skip closing
8 statement because I could take my opening and
9 just adjust it and say that the evidence was
10 presented or rather it will be presented, so
11 I'm not going to go into all that. I do want
12 to point out a of couple things, though, very
13 quickly for a closing statement.

14 I think Ms. Chayet's testimony about the
15 rule, there somehow being flaws in the rule, I
16 think was a very interesting concept because I
17 had asked her about what rule prohibits it.

18 And there isn't a rule about prohibiting
19 the method of treatment. And whether or not
20 that's a rule issue, if there's something
21 fundamentally wrong with the rule, that's for
22 the commission and for the public to get
23 involved and change the EPC's rule.

24 But the rule that we have today, the way
25 it's interpreted is, we don't get to select.

1 The EPC staff do not select the method for the
2 applicant. We just ensure the activity be
3 conducted, you know, that whole phrase,
4 conducted, designed, done in accordance with
5 least adverse, environmentally adverse, impact
6 associated with it.

7 We do that. The evidence showed there
8 was competent evidence in the record that we
9 inserted conditions based on that, that we went
10 through the process, the staff included those
11 in the conditions, and that the staff had
12 demonstrated that the permit provides
13 reasonable assurance that the activity will
14 comply with commission rules. It's really as
15 simple as that.

16 The only other thing that I want to say
17 is: The alternative to that argument about
18 looking at whether or not the herbicides can be
19 approved in one specific waterbody or will
20 have a downstream effect and what herbicide to
21 select or, you know, whether or not you select
22 that versus mechanical, you're going to quickly
23 get into that long discussion that we had about
24 -- that Mr. Juren had about scientific manuals,
25 things that are well beyond the scope of the

1 EPC staff and even as you, Hearing Officer
2 Petruff.

3 I mean, the issue of trying to select one
4 herbicide over the other or the herbicide over
5 a different activity quickly becomes a
6 nightmare, scientific argument that our staff
7 are not qualified to make those decisions. The
8 rule doesn't require that. And as the staff
9 testified numerous times, they rely on the EPA.
10 That is the federal agency that's tasked with
11 identifying how herbicides are applied in
12 aquatic systems, and they are the ones that
13 come up with the labeling instructions.

14 And that's the only rational way to
15 interpret the rule if you're going to allow
16 herbicides in Hillsborough County because if
17 you -- again, as Ms. Chayet said, herbicides
18 are often most adverse. Well, that essentially
19 prohibits herbicide use in the county. That's
20 not what was intended in the rule. That's not
21 what was intended by the commission, and that's
22 it.

23 That's our argument, that the method met
24 all of the rules. The method was conducted in
25 a manner with the least environmental impact.

1 It was minimized. It met the conditions for
2 nuisance removal. It had replanting. Swim and
3 open water access was put in the appropriate
4 place on the mortgage, basically because it was
5 a uniform shoreline. But the staff provided
6 competent evidence for all of those issues.
7 That's my closing statement.

8 HEARING OFFICER: Thank you. Mr. Juren,
9 do you want to have a closing statement?

10 MR. JUREN: Just real quick, and it will
11 be quick. I will not take much time. I would
12 just like to thank everyone for the efforts
13 that have gone on throughout this hearing to
14 listen to the evidence and go forward.

15 It was stated from the very beginning of
16 the entire process, I said, I just want the
17 equal treatment under the law. I didn't want
18 to have any additional requirements put on me
19 that other permit holders don't have. And that
20 was one of the reasons that I wanted this
21 capability. And that I will try to ensure that
22 I -- I will follow the rules in the labeling
23 if, in fact, the permit stands as written to
24 try to minimize any impacts, especially to try
25 to take care of Mr. Anderson. That's it.

1 HEARING OFFICER: Ms. Graham?

2 MS. GRAHAM: Officer Petruff, I'll keep
3 this short as well and I'll say that in the
4 discussion today, we need to look closely at
5 the specific conditions of this specific site,
6 the fact that it's not just a pond, but it's
7 linked to forested wetlands. It's right by
8 environmentally significant areas. A variety
9 of wildlife has been noted. It's close to the
10 Alafia -- its drainage basin is the Alafia
11 River.

12 Chantelle Lee for the EPC did admit that
13 a cumulative impact assessment that's required
14 under 1-11.09(2) was not conducted. While EPC
15 says that this is something that would have
16 precedential value and it would be harmful, I
17 would say that it's something that you need to
18 look at for the plain language of the rule and
19 the way that the plain language states under
20 1-11.09, "Wetland or other surface water
21 impacts under this authorization for
22 miscellaneous activities in wetland shall be
23 minimized to the greatest extent practicable
24 and shall be conducted, located, designed
25 and/or constructed so they cause the least

1 environmentally adverse impact."

2 We are saying that in this case EPC
3 abdicated their duty in even asking these
4 questions. The fact that the BOR requires them
5 to list the method among other details means
6 that is something that the EPC staff needs to
7 consider in their decision-making.

8 Whether the EPC finds this very difficult
9 and something that could have large impacts on
10 its policy-making I would tend to agree with
11 Mr. Zodrow that if that's an issue that needs
12 to be done, that can be taken up in rule-making
13 as far as specific criteria.

14 But as the plain language reads now, the
15 least environmentally adverse impacts are
16 required, and it is up to EPC staff to make
17 this analysis. Again, note that adverse
18 impacts are defined under 1-11.02 of negative
19 impacts upon a wetland resulting from
20 development which contaminates or destroys
21 wetlands or a portion thereof, developments,
22 the definition, includes clearing which EPC
23 staff had earlier testified to, that this is
24 clearing, so this does count as development.

25 Going back to the plain language of the

1 Rule 1-11.09(2), "Consideration shall be made
2 of cumulative impacts of proposed development
3 to the wetland system in combination with other
4 developments which have been or may be proposed
5 in the same drainage basin."

6 Mr. Juren has been remarkably candid
7 today -- and I applaud him for that -- for
8 explaining that, you know, they had mentioned
9 that this originally had been looked at for a
10 pond-wide permit and that he thinks at least
11 three other individuals will be applying for
12 permits.

13 And based on the plain language of the
14 rule, it's incumbent upon the EPC staff, who
15 also were told of that, Chantelle Lee testified
16 to that, that they need to be considering what
17 are these larger cumulative impacts.

18 Again, this is not a little strip mall
19 with a stormwater pond, you know, on Kennedy
20 Boulevard next to 275. This is in an
21 environmentally magical area. You know, it's
22 close to a number of different significant
23 impacts -- potential impacts to other
24 environmental areas like Boyette Springs and
25 the forested wetlands, and Gibbons Preserve is

1 close by.

2 Hillsborough County is very special that
3 it has an Environmental Protection Commission.
4 And, you know, this is not something that every
5 county even has, and so we're just here today
6 to say if you have rules and there's a plain
7 language of the rule, we're asking you to
8 interpret it how it's written. That's all
9 Mr. Anderson is looking for.

10 Had we been able to resolve this before
11 by Mr. Juren agreeing to do this with
12 mechanical or manual permitting removal, I
13 think Mr. Anderson, as he testified, would not
14 be sitting here today. Based on his personal
15 situation, that's why he has taken this as far
16 as he has.

17 That's all we have. We are really
18 hopeful that this will be resolved. I think
19 there are some bigger-picture discussions that
20 perhaps me and Mr. Zodrow will talk about. In
21 the future, I would enjoy the crafting rules.
22 But in the meantime, you do have the plain
23 language of the EPC code that must be
24 interpreted.

25 You know, the plain language is the

1 legislative polestar intent, and unfortunately
2 staff, while there is some discretion, cannot
3 make things up as they go. So that's where we
4 are today, and we are hopeful that the hearing
5 officer will either decide that this permit
6 must be denied or attach a condition on it
7 which requires that herbicides are not used.
8 Thank you very much.

9 HEARING OFFICER: Process.

10 MR. ZODROW: Process is that brings us --

11 HEARING OFFICER: Do you all want to do
12 proposed recommended orders?

13 MR. ZODROW: We would, yes. The Section
14 1-2.34, the EPC rules, the administrative
15 procedure rules, sets the next steps and
16 there's a section for report and
17 recommendation. It allows proposed recommended
18 orders. It doesn't mandate them. That's up to
19 you and the parties.

20 HEARING OFFICER: I'm fine. If the
21 parties want to do proposed recommend orders,
22 that's fine. We just need to have a schedule.

23 MR. ZODROW: Then actually, Hearing
24 Officer Petruff, you have a 30-day time frame.
25 I don't know if you recall that.

1 HEARING OFFICER: I do.

2 MR. ZODROW: There's a 30-day calendar
3 time frame from when either the transcripts are
4 provided or at the end of the hearing,
5 whichever is needed. We are not going to ask
6 for expedited transcripts, and I don't think we
7 need them, because we do have another
8 discussion that we probably don't even need to
9 do it in front of you because this would
10 typically go to next board EPC regular
11 commission meeting and typically the July one.

12 We're not going to make June, and I think
13 the July one may be canceled, so this is going
14 to be pushed out a bit. But I say that, the
15 reason I say that is because I don't think we
16 need expedited transcripts. That's the next
17 thing, that's it, that's the last for the
18 process that I have. So we submit proposed
19 orders with findings of facts, conclusions of
20 law and submit them to Hearing Officer Petruff.

21 HEARING OFFICER: So how much time would
22 you all like to submit those?

23 MR. ZODROW: You know what, I think it's
24 actually in the pre-hearing stipulation.

25 HEARING OFFICER: No, I don't think. We

1 said we'd talk about it later.

2 MR. ZODROW: Yeah, in the order, the
3 original order. I wasn't there but I know
4 there was some discussions about it.

5 (Discussion off record.)

6 MR. ZODROW: I personally won't need very
7 much time because I will have drafted a lot
8 before the transcript. Once the transcript,
9 then you just start to plug in all the
10 information.

11 (Discussion off the record.)

12 MR. ZODROW: I'd say 10 days after we get
13 the transcript. Is that fine?

14 MS. GRAHAM: I'd say 30 days after the
15 transcript.

16 HEARING OFFICER: That's a long time.

17 MR. ZODROW: 30 days, that's a long time.

18 MS. GRAHAM: All right. 15?

19 HEARING OFFICER: 15 is fine.

20 MR. ZODROW: I'm okay with 15.

21 HEARING OFFICER: I'm okay with 15.

22 MR. ZODROW: I don't think that's going
23 to push us up to a -- the way it works, too, is
24 you submit, this is for everyone. The proposed
25 orders get submitted. The recommended order

1 gets issued. Then there's a period of time to
2 file exceptions to the recommended order, then
3 there's a period of time to file responses to
4 exceptions.

5 (Discussion off the record.)

6 HEARING OFFICER: Yes, on the record.

7 MR. JUREN: During this entire period, so
8 far I have been allowed to perform no
9 treatments on the pond. I was told I can't do
10 anything on the pond. That continues until
11 this is over. Is that correct?

12 HEARING OFFICER: Yes, sir.

13 MR. JUREN: Okay. So during the entire
14 growing season of the summer. Okay.

15 HEARING OFFICER: Watch out for your
16 alligators.

17 MR. JUREN: I just want to take the kids
18 to fish.

19 HEARING OFFICER: All right. So
20 transcript, we will do two to three weeks, so
21 whenever we get it, close to the end of the
22 month at some point.

23 MR. ZODROW: Did we say 15 days?

24 HEARING OFFICER: 15 days for your
25 proposed recommended order. Then I have, what,

1 about 15 days after that to get mine in?

2 MR. ZODROW: Yes. I mean the rule says
3 30 days after the transcripts come in.

4 (Discussion off the record.)

5 HEARING OFFICER: I'll get mine out
6 before -- hopefully no later than the third
7 week of August depending upon how this all
8 plays out because I'll be in Spain for the
9 month of September, so I'll be done.

10 MR. JUREN: I do have one more
11 clarification just because I don't know exactly
12 where that delineation to the wetland is. I
13 had put up a white fence -- Mr. Anderson is
14 aware of this -- because I have an automated
15 mower, I don't like working out in the heat in
16 Florida, so I bought a mower that mows the
17 yard. But I put that white fence to make sure
18 that the mower does not go into the pond. I
19 have not run my mower this year because I
20 wanted to make sure I was -- I think that
21 that delineation, it doesn't go down to the
22 water.

23 MR. ZODROW: That's for delineation.

24 MR. JUREN: Delineation. I can show you
25 a picture of where that is. It's just grass.

1 We haven't mowed that, it's just grass. I'd
2 just like to go up to that fence line.

3 MR. ZODROW: We don't need to be on the
4 record. There's two ways to do it. We'll talk
5 about that.

6 HEARING OFFICER: So are we concluded?

7 MR. ZODROW: We're concluded on the
8 public hearing, but we have your order for you
9 and Ms. Graham's.

10 HEARING OFFICER: That will be fine.

11 (Proceedings concluded at 3:44 p.m.)

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REPORTER'S CERTIFICATE

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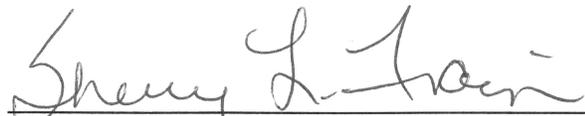
STATE OF FLORIDA:

COUNTY OF HILLSBOROUGH:

I, Sherry L. Frain, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED July 3, 2023.



Sherry L. Frain
Notary Public
State of Florida at Large



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.b.

Date of EPC Meeting: September 21, 2023

Subject: 2023 EPC Annual Report

Agenda Section: Regular Agenda

Division: Executive Director Report

Recommendation: Receive report and provide guidance as necessary

Brief Summary: The Executive Director will be delivering her annual report to the Commission. The presentation includes information and data regarding the EPC's efforts to protect the environment and regulate air, waste, wetlands, and water pollution, as well as activities relating to the Agency's core functions.

Financial Impact: No Financial Impact

List of Attachments: None

Background: Customarily, the Executive Director presents an annual report to the Commission each Fall. This report is intended to brief the Commission on environmental conditions and trends within Hillsborough County. Significant events are mentioned and several trends detailed. This report is usually presented to the Commission first and may be shared at various speaking engagements throughout the rest of the year.

The Annual Report presentation includes information and data regarding: EPC's efforts to protect our natural resources and regulate air, waste, wetlands, and water pollution; the collection of water and air quality data; the activities reflective of the Agency's core functions; and other general staff activities. The annual report is also one of the tools used by the Commission to evaluate the Executive Director's performance.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.c.

Date of EPC Meeting: September 21, 2023

Subject: Executive Director Annual Evaluation Process

Agenda Section: Regular Agenda

Division: Administration Division

Recommendation: Receive informational report on evaluation process and blank evaluation forms.

Brief Summary: Pursuant to the Executive Director's Employment Agreement, the Commission must perform an annual evaluation of her performance. The evaluation forms are attached and will also be distributed separately to the Commissioners. The results will be compiled and presented during the next EPC Commission meeting.

Financial Impact: No Financial Impact

List of Attachments: Performance Evaluation Form

Background: Per the Executive Director's Employment Agreement, annually in October the Commission evaluates the performance of the EPC Executive Director, Janet D. Lorton. This usually occurs after the presentation of the Agency's Annual Report. In preparation for the annual evaluation, EPC administrative staff will provide to the Commission a performance evaluation form (attached). In addition to the attached form, for convenience, staff will provide the Commissioners duplicate blank evaluation forms via e-mail.

For the Commission's consideration, the Executive Director will provide a self-evaluation with a list of EPC accomplishments to assist the Commissioners in measuring her performance. She would also welcome personal meetings with any Commissioner.

Please complete the evaluation form and return to the Administration Division Director, Elaine S. DeLeeuw, by October 9, 2023. The results will be compiled and presented during the following EPC Commission meeting.



PERFORMANCE EVALUATION

Janet D. Lorton, Executive Director
 Environmental Protection Commission of Hillsborough County
 October 1, 2022 to September 30, 2023

Instructions: on the form included below, please use the numerical ranking criteria to assess the Executive Director's behaviors, accomplishment of goals, and performance measures on core functions. Return the completed form to the EPC Administration Director, Elaine S. DeLeeuw.

RANKING CRITERIA – ranking criteria is listed from the highest (5) to the lowest (1).

- 5** - Behaviors/Accomplishments are outstanding and as such are obvious to others in County government and to members of the Community.
- 4** - Behaviors/Accomplishments are excellent and recognized as more than just competent in that expectations are exceeded in the area of responsibility.
- 3** - Behaviors/Accomplishments are good in that expectations are consistently met for the areas of responsibility.
- 2** - Behaviors/Accomplishments are adequate but fall below expectations for the area of responsibility.
- 1** - Behaviors/Accomplishments are below an acceptable level of expectations for the area of responsibility.



Insert a numerical ranking of 1 to 5 (5 being the highest) in each box and add any additional comments at the bottom.

BEHAVIORS							
Leadership	Communication	Responsiveness	Respectful & Fair Treatment	Quality of Staff Work	Service to the Community	Problem Solving	Management of Organization

ACCOMPLISHMENT OF GOALS				
Environmental Protection Excellence	Successful / Engaged Workforce	Customer/Partner Focused Excellence	Fiscal Responsibility	Continuous Improvement

PERFORMANCE MEASURES ON CORE FUNCTIONS					
Timely Delegated State Permit Processing	Timely Port Authority Permit Processing	Timely Local EPC Permit Processing	Timely Compliance	Timely Complaint Investigations	Timely Enforcement

Commissioner Name: _____ Date: _____

Comments (optional) :