

COMMISSION

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



Executive Director
Janet D. Lorton

General Counsel
Ricardo Muratti

Location

601 E. Kennedy Blvd., Tampa, Florida
BOCC Boardroom, County Center, 2nd Floor
See details below for virtual attendance

Meeting time
10:00 a.m.

COMMISSION AGENDA
August 15, 2024

- 1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, and INVOCATION**
- 2. ROLL CALL**
- 3. CHANGES TO THE AGENDA**
- 4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, or SEPARATE VOTE**
- 5. RECOGNITIONS and PROCLAMATIONS** *(None)*
- 6. PUBLIC COMMENT** - *Each speaker is allowed 3 minutes unless the Commission directs differently. If you wish to provide public comment, please see guidance below or on our website at: <https://www.epchc.org/about/meetings-agendas>*
- 7. APPROVAL OF CONSENT AGENDA**
 - Consent Agenda Items**
 - a. Approval of Meeting Minutes: April 18, 2024 3
 - b. Monthly Activity Report FY2024 (April, May, June and July) 7
 - c. Pollution Recovery Fund (PRF) Budget FY2024..... 9
 - d. Legal Case Notification 11
 - e. Select Performance Measure Goals Update..... 13
- 8. FINAL ORDER PROCEEDING**
 - a. Conduct a Final Order Hearing in Greco, et al. vs. 6111 Rome LLC and EPC, Case Nos. 23-EPC-009, 011, 013, 016 15
- 9. PUBLIC HEARING**
 - a. Conduct a public hearing to consider amendments to the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 - Wetlands, Chapters III and V, Rules of the EPC.....94
- 10. REGULAR AGENDA**
 - a. Initiation of Executive Director Evaluation Process..... 109
 - b. Executive Director’s Report
- 11. 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. 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](#). 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: August 15, 2024

Subject: Approval of the April 18, 2024, EPC meeting minutes.

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Approve the April 18, 2024, EPC meeting minutes.

Brief Summary: Staff requests the Commission approve the meeting minutes from the Commission meeting held on April 18, 2024.

Financial Impact: No Financial Impact

List of Attachments: Draft copy of the April 18, 2024, EPC meeting minutes.

Background: None

APRIL 18, 2024 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, April 18, 2024, at 10:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida, and held virtually.

The following members were present: Chair Gwen Myers and Commissioners Donna Cameron Cepeda, Harry Cohen, and Michael Owen (arrived at 10:05 a.m.).

The following members were absent: Commissioners Ken Hagan, Pat Kemp, and Joshua Wostal.

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

► Chair Myers called the meeting to order at 10:00 a.m. Commissioner Cameron Cepeda led in the pledge of allegiance to the flag and gave the invocation.

2. ROLL CALL - **Not addressed.**

3. CHANGES TO THE AGENDA - **Not addressed.**

4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, OR SEPARATE VOTE - **Not addressed.**

5. RECOGNITIONS AND PROCLAMATIONS

a. Recognition of Commissioner Joshua Wostal, past EPC Chair. - **Not addressed.**

b. Recognition of the EPC's 2024 Environmental Merit Award winner, Swara Patel, Carrollwood Day School for her project entitled *Experimental Investigation of Phytodesalination and Growth Rate of Duck Weed in Saltwater Hydroponics.*

► Ms. Janet Lorton, EPC Executive Director, recognized Ms. Patel, who made remarks. ► Dialogue ensued.

6. PUBLIC COMMENT - **None.**

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

- a. Approval of Meeting Minutes: January 18, 2024, Regular Meeting and March 19, 2024, Special Meeting
- b. Monthly Activity Report Fiscal Year (FY) 2024 (January, February, and March)

THURSDAY, APRIL 18, 2024

- c. Pollution Recovery Fund Budget FY 2024
- d. Legal Case Notification
- e. Select Performance Measure Goals for 2024
- f. Revision to EPC Rules of Order - Rule 14, Regular Meeting Calendar, Second Vote
- g. Adjustment to Executive Director's Procurement Authority
- h. Request for authority to take appropriate legal action against Broadway Quick Mart Incorporated and Jose Louis Ramos, Trustee of the Ramos Separate Property Trust, dated December 30, 2002
- i. Request for authority to take appropriate legal action against Hillrise Enterprises, LLC

► Chair Myers sought a motion to approve the Consent Agenda. **Commissioner Owen so moved, seconded by Commissioner Cohen, and carried four to zero.** (Commissioners Hagan, Kemp, and Wostal were absent.)

8. PUBLIC HEARING - **None.**

9. REGULAR AGENDA

- a. Radon Study

► Mr. Cody Winter, EPC, provided a presentation. Following dialogue, ► Chair Myers requested a motion just to receive the report. **Commissioner Cohen so moved, seconded by Commissioner Owen, and carried four to zero.** (Commissioners Hagan, Kemp, and Wostal were absent.)

- b. Wetlands Division Informational Presentation

► Mr. Michael Lynch and ► Ms. Christina Bryant, EPC, gave a presentation. Subsequent to clarification on the wetlands walk, ► **Commissioner Owen moved to receive the report, seconded by Commissioner Cohen, and carried four to zero.** (Commissioners Hagan, Kemp, and Wostal were absent.)

- c. Executive Director's Report

► Upon recognizing Mr. Marcus Tarver, EPC, Ms. Lorton supplied the report.

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

THURSDAY, APRIL 18, 2024

ADJOURN

▶ There being no further business, the meeting was adjourned at 10:49 a.m.

READ AND APPROVED: _____
CHAIR

ATTEST:
CINDY STUART, CLERK

By: _____
Deputy Clerk

jh

DRAFT



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #7.b.

Date of EPC Meeting: August 15, 2024

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 April, May, June and July FY24

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
FY24

		<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	FISCAL YEAR TO DATE
A.	Core Function: Citizen Support					
1	Environmental Complaints Received	132	125	121	89	1149
2	Agency-wide Public Record Request (Note: does not include division-specific record requests)	42	21	18	22	224
B.	Core Function: Air & Water Monitoring					
1	Air Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	96.5%	98.0%	97.2%	0.0%	N/A
2	Water Quality Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	99.1%	99.9%	99.9%	99.6%	N/A
3	Number of Noise Monitoring Events	3	0	1	1	19
C.	Core Function: Environmental Permitting					
1	Permit/Authorization Applications Received	180	189	131	116	1427
2	Applications In-house >180 days	15	22	17	19	N/A
3	Permits/Authorizations Issued	114	138	116	132	1172
4	Petroleum Cleanup Cases	142	120	140	121	1220
D.	Core Function: Compliance Assurance					
1	Compliance Inspections	318	376	265	340	3178
2	Compliance Test Reviews (NOTE: Wetlands reviews included under D.1)	134	124	112	157	1359
3	Compliance Assistance Letters Issued	161	132	121	165	1478
4	Warning Notices Issued	23	21	10	16	190
E.	Core Function: Enforcement					
1	New Cases Initiated	3	1	5	6	48
2	Active Cases	45	42	44	36	N/A
3	Tracking Cases	66	68	65	68	N/A



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #7.c.

Date of EPC Meeting: August 15, 2024

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 24 POLLUTION RECOVERY FUND
10/1/2023 through 7/31/2024**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 1,367,871	Artificial Reef	\$ 33,852	Minimum Balance	\$ 120,000	
Interest	\$ 45,814	Open Projects	\$ 394,178	Est. FY 25 Budget	\$ 33,852	
Deposits	\$ 613,495			Asbestos Removal	\$ 5,000	
Total	\$ 2,027,180	Total	\$ 428,030	Total	\$ 158,852	\$ 1,440,298

PROJECT		Project Amount	Project Balance
FY21 Projects			
TBW 2D Island Living Shoreline	10131.102063.582990.5370.1350	\$ 49,560	\$ 5,136.30
UNF Multidrug Resistant Bacteria	10131.102063.581990.5370.1353	\$ 50,000	\$ 27,203.17
		\$ 99,560	\$ 32,339.47
FY22 Projects			
Heckman Petro. Assess.	10131.102063.531001.5370.1297	\$ 15,000	\$ 15,000.00
		\$ 15,000	\$ 15,000.00
FY24 Projects			
Lake Magdalene Grass Carp Barrier	10131.102063.582990.5370.1360	\$ 20,258.72	\$ 20,258.72
H.C. Ext. Svc. - Pesticide Collection	10131.102063.581990.5370.1361	\$ 48,000	\$ 13,290.52
River Hills Nature Trail	10131.102063.582990.5370.1362	\$ 11,869.50	\$ 11,869.50
COT - Invasives Removal	10131.102063.581001.5370.1363	\$ 50,000	\$ 50,000.00
USF - E. Coli Impacts	10131.102063.581990.5370.1364	\$ 50,000	\$ 50,000.00
Reed Park Stormwater Rest.	10131.102063.582990.5370.1365	\$ 49,621	\$ 49,621.00
ERI MacDill AFB Mangrove Rest.	10131.102063.582990.5370.1366	\$ 50,000	\$ 50,000.00
		\$ 279,749.22	\$ 245,039.74



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #7.d.

Date of EPC Meeting: August 15, 2024

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 note, some cases included in the table below may have closed or reached resolution prior to this Commission meeting. Please direct any calls or e-mails concerning administrative or civil litigation to the EPC Legal Department.

NEW LITIGATION CASES OPENED SINCE APRIL 18, 2024 EPC COMMISSION MEETING

EPC Case No.	Date Opened	Case Type	Case Style	Division
24-EPC-004	04-18-2024	Administrative	R. Hilary and B. Callahan v. J. Blanchard and EPC	Wetlands
24-EPC-005	04-18-2024	Civil	EPC v. Broadway Quick Mart, Inc.	Waste
24-EPC-006	04-18-2024	Civil	EPC v. Hillrise Enterprises, LLC	Waste
24-EPC-007	04-18-2024	Administrative	Sandra Daniell Trustee and Michael May v. Dustin Franklin and EPC	Wetlands
24-EPC-008	07-30-2024	Administrative	Wayne Hopper and Sandra Hopper, Life Estate and Trustees v. Lee Te Kim and Moo Son Kim and EPC	Wetlands
24-EPC-009	07-31-2024	Administrative	Richards Lane and Margaret Jealous v. Lee Te Kim and Moo Son Kim and EPC	Wetlands



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #7.e.

Date of EPC Meeting: August 15, 2024

Subject: Select Performance Measure Goals for 2024

Agenda Section: Consent Agenda

Division: Executive Director Report

Recommendation: Informational Report

Brief Summary: As part of the EPC staff's strategic planning, the Agency measures key activities and set goals for 2024. These are tabulated and periodically presented to the Commission in the consent agenda.

Financial Impact: No Financial Impact

List of Attachments: Table Titled 2024 Goals

Background: The Agency measures performance for all five of its core functions. These core functions include permitting, compliance assurance, citizen support & outreach, enforcement, and ambient air & water quality monitoring. As part of the Agency's annual evaluation, staff sets goals for select activities and reports them periodically to the Commission. This is an integral part of the continuous improvement required by the Agency's strategic planning.

2024 Goals

Core Function	Measure	Pre-Sterling Year (2009)	2021	2022	2023	2024 YTD (2 nd Qtr)	2024 Goal
Permitting	Average Time to Issue an Intent for State Construction Permits	57 days	23 days	27 days	23 days	29 days	Less Than or Equal to 30 days
	Average Time to Issue an Intent for Tampa Port Authority Permits	56 days	58 days	47 days	78 days	60 days	Less Than or Equal to 60 days
	Average Time EPC Permits were In-house	21 days	34 days	31 days	32 days	22 days	Less Than or Equal to 30 days
Compliance	Timely Resolution of Lower Level Non-Compliance Cases	92%	93%	97%	99%	99%	Greater Than or Equal to 95%
Environmental Complaints	Timely Initiation of Investigation	99% in 5 Days	97% in 3 Days	99% in 3 Days	99% in 3 Days	99% in 3 Days	Greater Than or Equal to 95% in 3 Days
Enforcement	Timely Initiation of Enforcement	73%	98%	98%	100%	96%	Greater Than or Equal to 90%



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #8.a.

Date of EPC Meeting: August 15, 2024

Subject: Final Order Hearing in Frank Greco et al. vs 6111 Rome LLC and EPC, Case Nos. 23-EPC-009, 011, 013, and 016

Agenda Section: Final Order Hearing

Division: Wetlands Division

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

Brief Summary: The EPC issued a Wetland Impact and Mitigation Permit to 6111 Rome LLC to allow the property owner to impact 0.12 acres of wetlands to build a residential development on the property located at 6111 N. Rome Avenue, Tampa, Florida. Four neighbors, Frank Greco, Linda Parups, Michael Addison, and Henry Cramer (Appellants) participated in administrative appeal (evidentiary hearing) before an EPC Hearing Officer to oppose the permit. The Hearing Officer issued a Recommended Order which finds the permit application met applicable regulations and recommends that the permit be issued. The Commission must now sit in their quasi-judicial capacity to consider the Hearing Officer's Recommended Order, consider the parties' exceptions and responses to exceptions regarding the Recommended Order, and then render a Final Order. Each party may present their appropriate arguments filed in the Exceptions to the Recommended Order and the Response to Exceptions. No new evidence or new arguments may be presented or considered.

Financial Impact: No Financial Impact

List of Attachments:

- 1) Permit
- 2) Joint Prehearing Stipulation
- 3) Hearing Officer's Recommended Order
- 4) Greco's Exceptions to the Recommended Order
- 5) Cramer's Exceptions to the Recommended Order
- 6) Appellees' Joint Response to Cramer's Exceptions
- 7) Appellees' Joint Response to Greco's Exceptions

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 conducted similar to a civil trial. The Hearing Officer reviews the evidence and legal arguments from all parties and then the Hearing

Officer submits a written recommendation to the Commission as to whether the permit should be issued, modified, or denied.

In July of 2023, 6111 Rome LLC (Appellee and Permittee) applied to the EPC to allow the company to impact 0.25 acres of wetlands to build a residential development on the property the company owns located at 6111 N. Rome Avenue, Tampa, Hillsborough County, Florida (the “Property”). The Property is 4.66 acres and is located near the intersection of W. Hanna Avenue and N. Rome Avenue immediately West of the Hillsborough River. Through the permit application review process with EPC staff, the application was revised and the Permittee reduced the impact request to 0.12 acres of wetlands. On November 3, 2023, the EPC issued a Wetland Impact and Mitigation Permit #77492 (Permit; Attachment 1) to allow the Permittee to impact 0.12 acres of wetlands and requiring the Permittee to offset the impacts with wetland mitigation.

Neighbors, Frank Greco, Linda Parups, Michael Addison, and Henry Cramer (collectively “Appellants”) filed sufficient administrative appeals in opposition to the Permit alleging that the Permit does not comply with the EPC’s Wetlands Rule (Chapter 1-11, Rules of the EPC). Two additional neighbors filed sufficient appeals but then withdrew their appeals. Among other arguments, the Appellants argued the Property could be developed without impacting any wetlands. In accordance with Chapter 1-2, Rules of the EPC, the appeals were transferred to an EPC Hearing Officer, Thomas Thanas, Esq., to conduct an evidentiary hearing. The case was heard on May 13, 2024. The Hearing Officer issued a Recommended Order on June 19, 2024 (Attachment 3), finding in favor of Permittee 6111 Rome LLC and the EPC and recommending the Permit be issued.

Pursuant to Chapter 1-2, any party is allowed to file exceptions to the Recommended Order, arguing what facts or laws the Hearing Officer may have erred in finding or concluding, respectively. Two of the four Appellants filed exceptions to the Recommended Order. Appellant Greco filed Exceptions to Recommended Order on June 28, 2024 (Attachment 4). Appellant Cramer filed Exceptions to Recommended Order on June 29, 2024 (Attachment 5). The Exceptions to the Recommended Order filed by Appellant Greco argue certain findings of fact should be revised and dispute aspects of one conclusion of law in the Recommended Order. The Exceptions to the Recommended Order filed by Appellant Cramer generally dispute some findings and do not dispute any conclusion of law. Appellant Cramer’s Exceptions include a reference to an affidavit that was not introduced or accepted at the evidentiary hearing, thus that matter cannot be considered during the Final Order hearing. Guidance will be provided to any party to avoid argument and evidence that is beyond the scope of what was accepted at the evidentiary hearing and to narrowly focus on appropriate issues raised in exceptions and responses to exceptions.

Appellees 6111 Rome LLC and EPC filed a “Joint Response to Appellant Henry Cramer’s Exceptions” on July 8, 2024 (Attachment 6). Appellees 6111 Rome LLC and EPC filed a “Joint Response to Appellant Frank J Greco’s Exceptions” on July 8, 2024 (Attachment 7). EPC and 6111 Rome LLC argue through their Joint Responses to the Exceptions that the Appellants’ Exceptions should be rejected and that the Recommended Order should be adopted without changes. This proceeding during the Commission meeting is designed to hear those limited arguments regarding the relevant 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’ exceptions and responses to the exceptions, and then render a Final Order. Pursuant to Section 1-2.35, Rules of the EPC, the four parties that filed exceptions or responses (Greco, Cramer, 6111 Rome LLC, and EPC) 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 two Appellants (Parups and Addison) that did not file exceptions may not present legal arguments. The

Commission must only consider evidence in the record. No new evidence or new arguments 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.

The Commission is charged with rendering a Final Order after hearing arguments from all the parties during this proceeding at 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 Rick Muratti, EPC attorney, who was not an advocate or participant to the proceedings before the Hearing Officer. After the oral arguments, Mr. Muratti 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 a Final Order, presented to the Chair for signature, and issued to the parties.

The transcript of the evidentiary hearing will be provided separately to the Commission. The Commission may adjust the amount of time allowed for argument.

COMMISSION

Joshua Wostal CHAIR
 Harry Cohen VICE-CHAIR
 Donna Cameron Cepeda
 Ken Hagan
 Pat Kemp
 Gwendolyn "Gwen" W. Myers
 Michael Owen



DIRECTORS

Janet D. Lorton EXECUTIVE DIRECTOR
 Elaine S. DeLeeuw ADMIN DIVISION
 Sam Elrabi, P.E. WATER DIVISION
 Diana M. Lee, P.E. AIR DIVISION
 Michael Lynch WETLANDS DIVISION
 Rick Muratti, Esq. LEGAL DEPT
 Steffanie L. Wickham WASTE DIVISION

November 3, 2023

Daniel R. Sefair
 6111 Rome, LLC.
 15905 Danboro Court
 Tampa, FL 33647
dan@sefair-inv.com

Owner:	6111 Rome, LLC.
EPC Review Number:	77492
Type of Permit / Authorization:	AUTHORIZATION FOR WETLAND IMPACT with MITIGATION PLAN
Project Address:	6111 N Rome Ave, Tampa, FL 33604
STR:	35-28S-18E
Folio:	10343-0000

Dear Daniel Sefair:

The staff of the Environmental Protection Commission of Hillsborough County (EPC) has completed a review of the subject application submitted on July 5, 2023, and the most recent additional information submitted on November 3, 2023, by Dr. Dale Meryman (Agent) on behalf of 6111 Rome, LLC. (Applicant) to impact wetlands and/or Other Surface Waters (OSW) in Hillsborough County, hereinafter collectively referred to as "wetland(s)" unless otherwise stated. The impacts consist of 0.12 acres of permanent wetland impacts for development of the 6111 Rome, LLC. and 6111 N. Rome Ave, Tampa, FL 33604 (Folio: 10343-0000; 35-28S-18E) project (hereinafter "Property").

In accordance with the EPC's Wetlands Rule, Chapter 1-11, Rules of the EPC (Chapter 1-11), the Applicant demonstrated sufficient justification in the application for the wetland impact in that the proposed impact is necessary for the reasonable use of the land as described in Section 1-11.07, Rules of the EPC and the environmental benefits of the area will be protected through mitigation in accordance with Section 1-11.08, Rules of the EPC. Therefore, the EPC Executive Director authorizes wetland impacts and the final Mitigation proposal subject to the conditions enumerated below.

Pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, (EPC Act), any person whose interests are protected by the EPC Act and who is adversely affected or otherwise aggrieved by this action has the right to appeal this action. The EPC reserves the right to stop this Permit from becoming effective under any of the following circumstances: (1) if the EPC revokes the Permit pursuant to Section 1-2.052, Rules of the EPC; or (2) if a "Notice of Appeal" or "Request for Extension of Time to File a Notice of Appeal" under Part IV of Section 1-2, Rules of the EPC (see Attachment A for Notice of Rights) is timely filed. The Applicant shall be noticed in writing if any of

Environmental Excellence in a Changing World

these occur. It is recommended that the Applicant publish at its own expense the notice of this agency action (see Attachment C) in a newspaper of general circulation as identified in Chapter 50, F.S. in Hillsborough County, Florida, so as to provide constructive notice to potentially aggrieved parties and to limit the time period for filing an administrative appeal.

MITIGATION RELATED CONDITIONS - SECTION 1-11.08

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

Wetland ID	FLUCCS (Florida Land Use, Cover and Forms Classification System)	Impact Acreage	Functional Loss	Mitigation Type
SD-1	510 (<i>Streams and Waterways</i>)	0.12	0.06	Mitigation Bank Credit
Total Impacts		0.12 acres (excluding exempt & temporary impacts)	0.06FL	

2. Mitigation is required to compensate for the wetland impacts to the 0.12 acres of wetlands. Utilizing the Uniform Mitigation Assessment Method outlined in Chapter 62-345, Florida Administrative Code (F.A.C.), it was determined that the proposed impacts will result in the loss of 0.06 functional units, while the proposed mitigation will result in the gain of 0.06 functional units. The Applicant shall mitigate the wetland impacts via the purchase of forested wetland credits from an appropriate mitigation bank prior to any of the above-identified wetland impacts. The Applicant has indicated the required credits will be acquired from the Fox Branch Wetland Mitigation Bank.
3. Before any wetland impacts occur, the Applicant shall send to the EPC written documentation of the purchase of the credits from the Fox Branch Wetland Mitigation Bank and the ledger of remaining credits in the mitigation bank. Under no circumstance may wetland impacts occur until EPC staff has received the documentation of the purchase of the credits from the mitigation bank.
4. EPC staff must review and approve the construction/development plans required by the City of Tampa for this project.
5. The Applicant shall notify the EPC in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of the real property where the impacts are located. In the event of sale of the mitigation areas, the Applicant, in coordination with the fee simple owner, shall specifically retain the obligation to obtain the mitigation credit.
6. The Applicant may transfer this Authorization to a new owner with EPC written approval. If the terms of the Authorization are to be assigned and assumed, the Applicant must cooperate with the EPC in good faith to ensure this authorization is transferred to the new property owner/applicant within 60 days after any sale, conveyance, or other transfer of ownership or control.

7. This authorization for wetland and/or OSW impacts is valid for a period of five years from the date of this original authorization letter (expiration date November 3, 2028). If the site plans are altered or the time period for the allotted impact expires, the Applicant is not authorized to impact wetlands or OSW. In the event the Applicant requests an extension of time for the permit prior to the expiration, the EPC may extend the expiration date if site conditions, and relevant laws and rules have not changed. In the event the authorization is expired, the Applicant must re-submit a complete application with the appropriate review fee for any future proposed impacts. The conditions of monitoring of any wetland mitigation areas shall survive the expiration of this authorization and continue to be enforceable until all EPC success criteria is met.

GENERAL CONDITIONS

8. This approval applies only to the development proposal as submitted under Chapter 1-11, and in no way does it provide EPC approval for any other EPC permitting program. In addition, this approval does not imply exemption from obtaining all proper permits from other governmental agencies. The Approved Wetland Impact Plan (Attachment B) is attached and incorporated into this authorization and is enforceable as part of this authorization.
9. Any activity interfering with the integrity of wetland(s) or other surface water(s), such as clearing, excavating, draining or filling, without written authorization from the EPC Executive Director or designee, would be a violation of the Environmental Protection Act of Hillsborough County, Chapter 84-446, and Chapter 1-11.
10. 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.
11. All activities shall be implemented following the plans, specifications and other criteria approved by this authorization. Any deviations must be authorized in a written modification. Any deviations that are not so authorized may subject the Applicant to enforcement action. The Applicant shall notify the EPC in writing of changes required by any other regulatory agency that require changes to the permitted activity. All modifications of this authorization shall be proposed in a permit modification application submitted to EPC with the appropriate fee in accordance with Chapter 1-6, Rules of the EPC.
12. At least 48 hours prior to beginning the authorized activities, the permittee shall provide notification in writing indicating the expected start and completion dates.
13. Upon reasonable notice to the Applicant, EPC staff shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the authorization.

6111 ROME, LLC.
November 3, 2023
Page 4 of 8

If you require additional information, please contact Abigail Bridges at bridgesa@epchc.org or at (813) 627-2600, extension 1231.

Sincerely,

Janet D. Lorton

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

Attachments:

- A. Notice of Rights
- B. Approved Wetland Impact Plan
- C. Recommended Publication Notice

ec: Dale.Meryman@merymanenvironmental.com
Michael Gile, EPC, GileM@epchc.org

ATTACHMENT A

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, 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.

Environmental Excellence in a Changing World

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

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

It is also **RECOMMENDED THAT NO WORK** authorized by this action occur until after the time period for challenging this decision has expired.

ATTACHMENT B

APPROVED WETLAND IMPACT PLAN

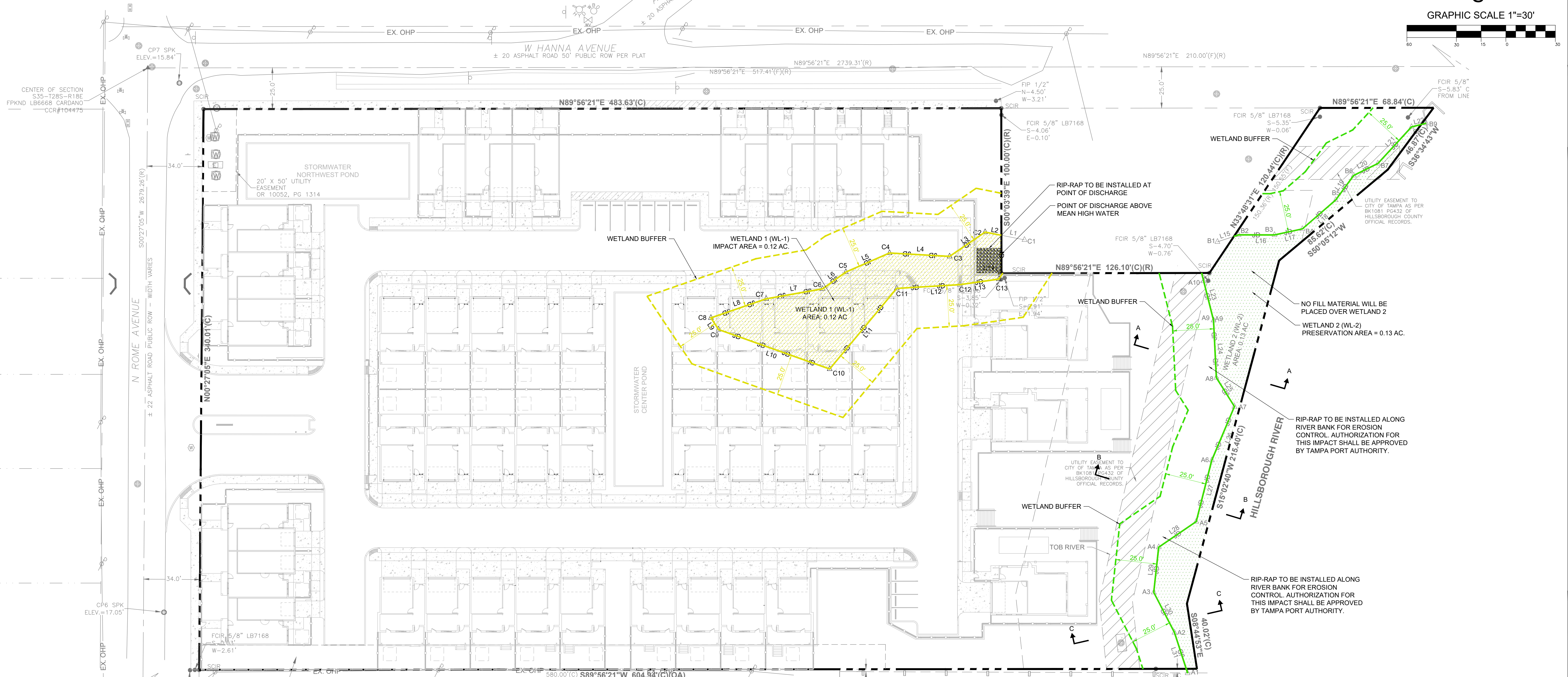
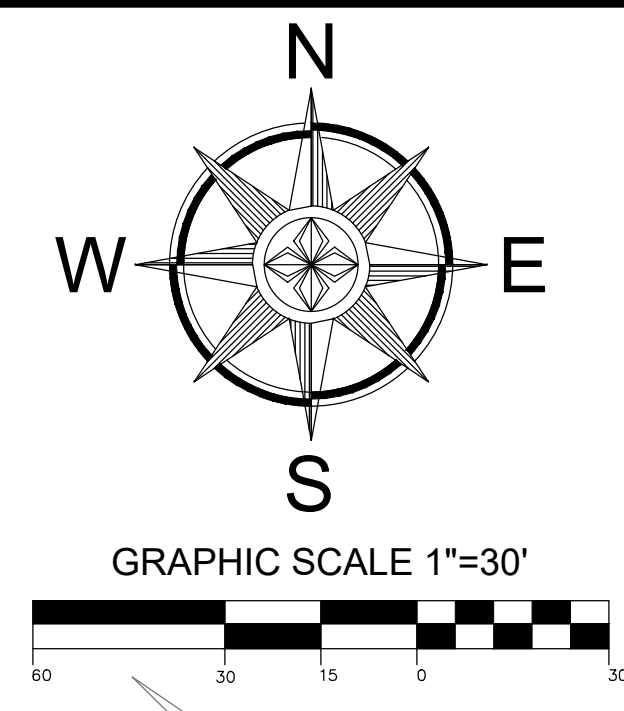
ATTACHMENT C

RECOMMENDED PUBLICATION NOTICE

It is recommended that the Applicant publish at their own expense the following notice of this agency action in a newspaper of general circulation in Hillsborough County, Florida, for a minimum of one day so as to provide constructive notice to potentially aggrieved parties. It is also **RECOMMENDED THAT NO WORK** authorized by this action occur until after the time period for challenging this decision has expired.

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY NOTICE OF AGENCY ACTION

The Environmental Protection Commission of Hillsborough County gives notice of agency action of issuance of an Authorization to fill wetlands pursuant to Chapter 84-446, Laws of Florida, as amended. The Authorization addresses approval for filling wetlands located at 6111 N. Rome Ave, Tampa, FL 33604 (Folio: 10343-0000; 35-28S-18E). 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, 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.



WETLAND LINE TABLE

LINE	BEARING	DISTANCE
L1	N78°50'53"W	14.25'
L2	N78°50'53"W	10.05'
L3	S55°39'15"W	26.10'
L4	N86°48'12"W	36.49'
L5	S86°25'54"W	28.86'
L6	S54°14'39"W	17.44'
L7	S79°59'32"W	34.68'
L8	S70°58'37"W	35.46'
L9	S33°31'46"E	8.51'
L10	S70°26'47"E	71.42'
L11	N39°45'29"E	63.54'
L12	N86°36'13"E	38.33'
L13	N81°51'05"E	23.91'
L14	N33°08'55"E	4.27'
L15	N71°55'02"E	10.52'

WETLAND LINE TABLE

LINE	BEARING	DISTANCE
L16	S89°56'50"E	21.72'
L17	N77°52'05"E	17.25'
L18	N49°06'22"E	26.78'
L19	N36°14'18"E	18.47'
L20	N63°43'48"E	16.33'
L21	N42°38'54"E	30.12'
L22	N75°41'09"E	9.10'
L23	S14°04'25"E	29.61'
L24	S02°47'42"E	34.74'
L25	S32°00'55"E	20.71'
L26	S22°53'17"W	35.27'
L27	S14°15'11"W	38.44'
L28	S55°40'51"W	27.53'
L29	S06°14'55"W	27.51'
L30	S27°16'12"E	27.44'
L31	S17°55'59"E	23.15'

WETLAND POINTS TABLE

POINT NUMBER	NORTHING	EASTING
A1	1333864.44	503154.29
A2	1333889.03	503146.33
A3	1333913.43	503133.76
A4	1333940.77	503136.75
A5	1333956.29	503159.49
A6	1333993.55	503168.95
A7	1334026.04	503182.67
A8	1334043.59	503171.69
A9	1334078.29	503170.00
A10	1334102.13	503164.02
B1	1334125.93	503172.37
B2	1334130.13	503185.24
B3	1334130.11	503206.95
B4	1334133.74	503223.82
B5	1334151.27	503244.06
B6	1334166.17	503254.98
B7	1334173.39	503269.62

WETLAND POINTS TABLE

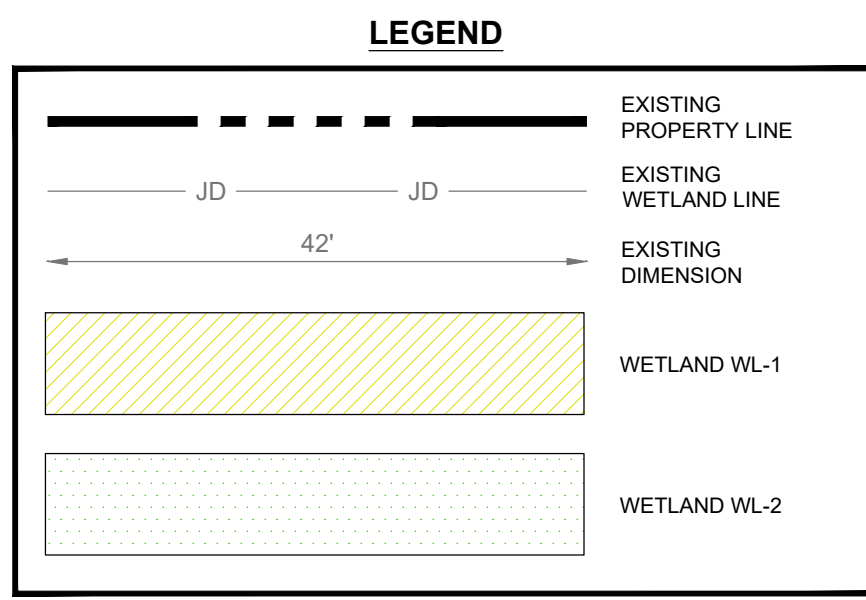
POINT NUMBER	NORTHING	EASTING
B8	1334195.55	503290.03
B9	1334197.80	503298.85
C1	1334127.11	503055.39
C2	1334131.81	503031.54
C3	1334117.08	503009.99
C4	1334119.12	502973.56
C5	1334107.58	502947.10
C6	1334097.39	502932.95
C7	1334091.36	502898.80
C8	1334079.81	502865.28
C9	1334072.72	502869.98
C10	1334048.81	502937.28
C11	1334097.66	502977.91
C12	1334099.93	503016.18
C13	1334103.32	503039.85

WETLAND 1 - MITIGATION TREES CALCULATION

TREE NO.	COMMON NAME	ASSUMED SPECIES	DBH (Inches)	IS GRAND?	TREE NOTES	DISPOSITION	CR-HAZ	RENTENTION PRIORITY	MITIGATE	MITIGATION REQ'D
48	Palm		16			Removed				0
52A	Palm		12			Removed				0
54	Palm		14			Removed				0
96	Palm		10			Removed				0
97	Palm		11			Removed				0
218	Laurel Oak	Laurel Oak/Quercus laurifolia	22		lean/over shed	Removed	C-9			0
228	Laurel Oak	Laurel Oak/Quercus laurifolia	14			Removed	B-3			0
242	Live Oak	Southern Live Oak/Quercus virginiana	14			Removed	B-3			0
242A	Palm		20			Removed				0
243	Live Oak	Southern Live Oak/Quercus virginiana	12			Removed	B-3			0
244A	Camphor	Camphor/Cinnamomum camphora	12			Removed	F-9			0
250	Live Oak	Southern Live Oak/Quercus virginiana	8			Removed	B-3			0

WETLAND 2 - MITIGATION TREES CALCULATION

TREE NO.	COMMON NAME	ASSUMED SPECIES	DBH (Inches)	IS GRAND?	TREE NOTES	DISPOSITION	CR-HAZ	RENTENTION PRIORITY	MITIGATE	MITIGATION REQ'D
12	Cedar	Southern Red Cedar/Juniperus silicicola	25			Preserved	D-9			0
14	Live Oak	Southern Live Oak/Quercus virginiana	38	✓		Preserved	B-6			0
91A	Palm		8			Preserved				0
92	Palm		10			Preserved				0
92A	Palm		18			Preserved				0
93A	Palm		18			Preserved				0
95A	Palm		12			Preserved				0
96A	Brazilian Pepper		14			Removed				0
138	Bay	Red Bay/Persea borbonia	18			Preserved	F-9			0
138A	Brazilian Pepper		4			Removed				0
213A	Brazilian Pepper		12			Removed				0
213	Laurel Oak	Laurel Oak/Quercus laurifolia	14			Preserved	B-3			0
214	Laurel Oak	Laurel Oak/Quercus laurifolia	12			Preserved	B-3			0
214A	Cedar	Southern Red Cedar/Juniperus silicicola	26		One Side Limb	Preserved	C-9			0
216A	Bay	Red Bay/Persea borbonia	18			Preserved	B-3			0
217A	Bay	Red Bay/Persea borbonia	18			Preserved	B-3			0
218	Laurel Oak	Laurel Oak/Quercus laurifolia	22		lean/over shed	Preserved	C-9			0
277	Bay	Red Bay/Persea borbonia	15			Preserved	B-3			0



CASE NO.: REZ-23-10 DATE: _____

DATE _____ CITY COUNCIL CHAIRMAN _____

DATE _____ CITY CLERK _____

CERTIFIED DATE _____ ZONING ADMINISTRATOR _____

WETLAND PLAN

ROME TOWNHOMES
6111 N. ROME AVENUE
TAMPA, FLORIDA 33604

HPPE
HIGH POINT ENGINEERING
Certificate of Authorization No. 30275
5300 W. Cypress Street, Suite 282
Tampa, Florida 33607
Tel. (813) 644-8333
Fax (813) 644-7000

LAND PLANNING - CIVIL ENGINEERING - LANDSCAPE ARCHITECTURE

PROJECT NO:	22-011-MSD
ISSUE DATE:	10-24-22
DESIGNED BY:	PG
DRAWN BY:	PG
CHECKED BY:	BG
APPROVED BY:	BG
DATE:	08-14-23
PER CITY OF TAMPA:	PG
DATE:	05-01-23
PER CITY OF TAMPA:	PG
DATE:	05-01-23
REVISIONS:	

SHEET:
5 of 18

26 of 110

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

FRANK J. GRECO,

Appellant,

vs.

EPC Case No. 23-EPC-009

6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,

Appellees.

_____ /

LINDA PARUPS,

Appellant,

vs.

EPC Case No. 23-EPC-011

6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,

Appellees.

_____ /

MICHAEL C. ADDISON,

Appellant,

vs.

EPC Case No. 23-EPC-013

6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,

Appellees.

_____ /

HENRY CRAMER,

Appellant,

vs.

EPC Case No. 23-EPC-016

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

JOINT PREHEARING STIPULATIONS

Appellants Frank Greco (“Appellant Greco”), Linda Parups (“Appellant Parups”), Michael Addison (“Appellant Addison”), and Henry Cramer (“Appellant Cramer”) (collectively “Appellants”) and Appellees, 6111 Rome LLC (“6111 Rome”) and Environmental Protection Commission of Hillsborough County (“EPC”), by and through their undersigned counsel, jointly respond to the Order Scheduling Final Hearing and Order of Pre-Hearing Instructions entered by the assigned Hearing Officer Thanas on February 8, 2024, to enter into a joint prehearing stipulation, and state as follows:

PRELIMINARY STATEMENT

On July 5, 2023, Appellee 6111 Rome LLC submitted to the EPC Executive Director an Application for a Wetland Impact and Mitigation (“Impact Application”) for the purpose of impacting 0.25 acres of wetlands on the property located at 6111 N Rome Avenue, Tampa, Hillsborough County, Florida (“Property”). The EPC reviewed the application under applicable sections of Chapter 1-11, Rules of the EPC (Wetlands Rule) and Chapter III of the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands (“Basis of Review” or “BOR”) adopted within Section 1-11.06(2), Rules of the EPC. After an EPC issue RAI, the Impact

Application was amended and reduced the proposed impacts for a total wetland impact of approximately 0.12 acres. The EPC Executive Director issued a Wetland Impact with Mitigation Authorization #77492 (“Impact Permit”) approving approximately 0.12 acres of wetland impact on November 3, 2023. A Notice of Appeal challenging the Impact Permit was submitted by the Appellant Greco on November 20, 2023. Amended Notices of Appeal challenging the Impact Permit were submitted by the Appellants Parups, Addison, and Cramer on December 19, 2023, December 20, 2023, and December 20, 2023, respectively.

STATEMENT OF CONTROVERSY

The issue to be determined in this administrative appeal is whether the EPC had reasonable assurance that “proposed impact to the wetland is necessary for the reasonable use of the Applicant’s property” under Chapter 84-446, Laws of Florida, as amended (the EPC Act), Chapter 1-11 Wetlands, Rules of the EPC, and Chapter III of the adopted Basis of Review For Authorization of Activities Pursuant to Chapter 1-11 – Wetlands (“BOR” or “Basis of Review”).

Appellees 6111 Rome and EPC contend that reasonable assurance that reasonable use of the land could not be accomplished without impact to the wetlands pursuant to in Section 1-11.07, Rules of the EPC and Chapter III of the BOR and that the environmental benefits of the area are adequately protected through mitigation in accordance with Sections 1-11.09 and 1-11.08, Rules of the EPC.

The Appellants collectively or individually allege the following arguments:

- 1.) EPC, by issuing Wetland Impact with Mitigation Authorization #77492 has failed to adhere to its own Mission, Vision, Stated Values, and Intent. The standards of the EPC Enabling Act (84-446, Laws of Florida & as amended Ch. 87-495), and the EPC Wetland Rule (Chapter 1-11) have not been met.
- 2.) The EPC Basis of Review Chapter 3, Conditions for Issuance have not been properly applied by the Executive Director, particularly in regard to Reasonable

Use (3.1.1) and Reasonable Use of the Land (3.2.1) (a-k). It is unnecessary to disturb the wetland to profitably develop the site. It is imperative that the importance and the integrity of the wetland be retained for the benefit if the residents of Hillsborough County.

- 3.) Delineation of wetlands on and off the site fails to address the visibly flowing surface water that travels from “Wetland 1” through “Wetland 2” and into the Hillsborough River.
- 4.) Application processes of the applicant have been, in some cases incomplete and inaccurate, exhibiting a lack of detail, concern and undue haste.
- 5.) EPC, by issuing Wetland Impact with Mitigation Authorization #77492 the ecosystem is impacted.

The parties do not waive any rights to object to any jurisdictional, scope, relevancy, or other objections to these Statements of Controversy/arguments.

SUMMARY OF POSITIONS

APPELLANTS

Statement of Controversy 1

The following Rules of the EPC are either not properly applied or considered in the authorization of 77492 or information applied by the applicant in the application process has been inaccurate or incomplete, leading to an improper authorization that should be withdrawn.

- 1-11.01 “It is the policy of the State of Florida and the EPC to preserve the essential character of wetland property. The owner of the wetlands has no right to use them for which they are unsuited in their natural state. It shall be the priority of the EPC to avoid the disturbance of wetlands in the county and to encourage their use only for purposes which are compatible with their natural functions and environmental benefits.”

- 1-11.02 Definitions, “Adverse Impact a negative affect upon a wetland, resulting from the development which contaminates, alters or destroys, or which contributes to contamination, alteration, or destruction of a wetland or portion thereof such that its environmental benefits are destroyed, reduced, or impaired or which threatens their present or future functioning.”
- 1-11.05 “Pollution Prohibited- The intentional or known destruction of marine wetlands and/ or other surface waters by filling, excavation, dredging, prop-dredging, contamination, or other development...is a violation of this rule”.
- 1-11.07 EPC Authorization- “Written authorization may be given to conduct proposed development affecting wetlands only if reasonable use of the land cannot be accomplished without affecting the wetland, 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.”
- 1-11.08 Minimum Requirements of a Mitigation Plan— “(6) Where wetlands are or may be adversely affected by development, an acceptable mitigation plan shall include detailed plans designed to compensate for any adverse impact to the environmental benefits and shall comply with Commission rules 62-345.200-900, F.A.C. All such mitigation shall comply with the following: (a) specific design requirements based upon conditions of the site and the type of mitigation required, (b) a schedule to remove exotic or nuisance vegetation, (c) monitoring and replacement to assure a specified survival rate of vegetation for a reasonable period as specified in the plan, (d) the entire mitigation plan must be confined within the geographic boundaries of Hillsborough County.”

- 1-11.08 Minimum Requirements of a Mitigation Plan— “(7) An applicant for wetland impacts may also obtain mitigation for wetland impacts by purchasing mitigation credits from a fully permitted wetland regional bank or through the use of an offsite regional mitigation area. The Commission may also award and deduct mitigation bank credits from a mitigation bank pursuant to the standards in this rule. All reasonable attempts shall be made to locate this mitigation effort within the geographic boundaries of Hillsborough County”.
- 1-11.09 (2) “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”.

That “Wetland 1” as described must necessarily drain through what is described as “Wetland 2”, and further, that applicant intends to construct docks at “Wetland 2”, consideration of those impacts has not been properly addressed, recognized, or announced.

- 1-11.11 (2) (c) Exemptions “development under these exemptions shall not cause offsite adverse impacts, including flooding, or otherwise affect the local hydrology so as to affect other wetlands”.

Any exemptions considered for this authorization that may have occurred during review of application or amended application should be disallowed due to adverse effects on the hydrology of “Wetland2” and the Hillsborough River.

Statement of Controversy 2

1-11.01 Intent

“The intent of this rule is to provide local standards for the protection, maintenance, and utilization of wetlands within Hillsborough County, while providing for the identification and

delineation of wetlands, recognizing the rights of individual property owners to use the land in a reasonable manner as well as the rights of all citizens to protection and purity of the waters of Hillsborough County and their associated wetland ecosystems.”

“It is the policy of the State of Florida and the Environmental Protection Commission to preserve the essential character of the wetland property. The owner of wetlands has no right to use them for a purpose for which they are unsuited in their natural state. It shall be the priority of the Environmental Protection Commission to avoid the disturbance of wetlands in the County and to encourage their use only for purposes which are compatible with their natural functions and environmental benefits.”

1-11.07 Environmental Protection Commission Authorization

“Written authorization may be given to conduct proposed development affecting wetlands only if reasonable use of the land cannot be accomplished without affecting the wetland, 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”.

EPC Basis of Review, Chapter 3

This chapter addresses conditions for issuance or denial of impact authorization. Reasonable Use (3.1.1) states that pursuant to Section 1-11.07, “Any impacts authorized under this rule shall be reduced to the minimum amount necessary”. “Reasonable Use (of the land)” (3.2.1) of the BOR EPCHC Wetland Rule relies on the consideration of various factors described in (a) through (k). Each of these factors, when properly considered present conditions that should lead to denial of the authorization. Reasonable use of the Property is possible without the Authorized Impact to Wetland #1.

Statement of Controversy 3

The visible flow of surface water from “Wetland 1” through “Wetland 2” and on to the Hillsborough River provides that there are either three separate wetlands or one, but certainly not two. As the City of Tampa owns property whose Northern border runs on the same line as the 6111 parcel with their East, West, and Southern borders falling within the North border of the 6111 property, no delineation was performed on the City of Tampa parcel. By recognizing that surface water flow from “Wetland 1” runs East toward the City of Tampa property, travels South around the City of Tampa Structure then returns to an Eastern flow to the river, a correction to the delineation(s) is required. In the case that there is one wetland or three, the delineation as current is incorrect and makes the UMAM incorrect as well.

Statement of Controversy 4

Application processes of the applicant have been, in some cases incomplete and inaccurate, exhibiting a lack of detail, concern and undue haste. A review of applications and comments have been contradictory, incomplete or inaccurate.

Statement of Controversy 5

There is a possibility that a spring or artesian well on the Property. There is an area of depression that occurs at the location of Wetland #1.

APPELLEES

It is Appellees’ position that the Impact Permit was properly issued by EPC and there is no basis for reversal under Chapter 1-11, Rules of the EPC. Appellees contend that the inquiry on appeal is narrow and limited to the provisions of sections 1-11.07, 1-11.08, and 1-11.09, Rules of the EPC, and Appellees have filed a pending Joint Motion for Summary Recommended Order in Part to that effect to limit the legal issues to be adjudicated. First, Section 1-11.07, Rules of the EPC, does not warrant reversal of the Impact Permit because 6111 Rome has

provided EPC reasonable assurance that reasonable use of the land cannot be accomplished without affecting the wetland, as determined by the guidelines found in BOR 3.2.1. Second, section 1-11.08, Rules of the EPC, does not warrant reversal of the Impact Permit because 6111 Rome has properly provided for mitigation through Fox Branch Ranch Mitigation Bank; the impact is within the service area of this bank; and the bank provides the appropriate type of credits to offset the proposed impacts. Mitigation Banks are an appropriate mitigation type pursuant to section 1-11.08(7) Third, Section 1-11.09, Rules of the EPC, does not warrant reversal of the Impact Permit because 6111 Rome has provided adequate protection of the environmental benefits of the wetland through the foregoing mitigation. To the extent any other provision of Chapter 1-11 is deemed justiciable, Appellants have asserted no basis for reversal of the Impact Permit.

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, adopted April 25, 1985, last amended May 18, 2023;
 - c. EPC Wetlands Rule Chapter 1-11, adopted May 14, 1985, last amended July 17, 2008;
 - d. EPC Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands, adopted July 17, 2008, last amended May 20, 2022;
 - e. EPC Final Order Putney v. EPC, June 28, 2000;
 - f. EPC Final Order Stone v. EPC, December 5, 2002;

- g. EPC Final Order Joszi v. Winterroth and EPC, October 1, 2007;
 - h. EPC Final Order Romano v. City of Tampa and EPC, February 3, 2011;
 - i. EPC Final Order Medero v. EPC, January 28, 2013;
 - j. EPC Final Order Ogden v. Truex and EPC, June 22, 2015;
 - k. EPC Final Order Vance v. Vath and EPC, August 8, 2015;
 - l. EPC Final Order Criollo v. Johnsen and EPC, April 19, 2021;
 - m. EPC Final Order Krentz and Goodwin v. Park Square Enterprises, LLC and EPC,
January 17, 2023;
 - n. EPC Final Order Anderson v. Juren and EPC, September 25, 2023;
- 2) Wetland Impact with Mitigation Application #77492, July 5, 2023 (Composite Exhibit);
 - a. 77492_MIT Application
 - b. 77492_Additional Docs
 - 3) EPC Site Inspection Report #77492, August 18, 2023;
 - 4) EPC Request for Additional Information (RAI) #77492, August 2, 2023;
 - 5) 6111 Rome LLC RAI Response #77492, August 28, 2023 (Composite Exhibit);
 - a. 77492 – 6111 Rome LLC – MIT RAI
 - b. 77492 – 6111 Rome LLC – RAI Emails
 - c. 77492 – 6111 Rome LLC – RAI Response Package Reduced
 - d. 77492 – 6111 Rome LLC – Emails – RAI Related – Convers
 - e. 77492 – 6111 Rome LLC – Emails – RAI Related – Final S
 - f. 77492 – 6111 Rome LLC – Emails – RAI Related Partial
 - g. 77492 – 6111 Rome LLC - Emails – RAI Related
 - h. 77492 – 6111 Rome LLC – Emails – RAI

6) Wetland Impact with Mitigation Authorization #77492, November 3, 2023;

APPELLANTS' EXHIBITS:

- 1) EPC RAI dated August 2, 2023
- 2) Appellant response to RAI dated August 28, 2023
- 3) UMAM Quantitative and Qualitative description of Wetland 1
- 4) UMAM Quantitative and Qualitative description of Wetland 2
- 5) Stearns Weaver Miller Share File RFP 1-6
 1. RFP #3: Photos identified as 094301, 094725, 095404; Alta/ ANSYS Survey from Dale Meryman notes
 2. RFP #4: Specific Purpose Survey; Wetland Survey; Justification/Support File (pages 3-9 and 11-12); SWFWMD Docs File (pages 1-7 and 16-33); Wetland Impact Entire File; WMD Docs (pages 1-4); WMD ERP Docs (pages 1-4)
 3. RFP #5: 6111 RAI Response (page 4); RAI Response Package Reduced entire file
 4. RFP #6: RAI pages 8-12
- 6) USACE website
- 7) EPA.gov website
- 8) EPC and 6111 combined responses to Henry Cramer's first request for production and interrogatories
- 9) EPC response to Henry Cramer's second request for production and interrogatories
- 10) 6111 Rome's response to Henry Cramer's second request for production and interrogatories
- 11) City of Tampa memorandum of June 21, 2023 from Natural Resources
- 12) Applicant produced tree survey for 6111 Rome Avenue

- 13) City of Tampa November 8, 2023 remarks regarding rezone request 23-10
- 14) SWFWMD permit #46721, File # PA409693
- 15) Email chain encompassing communications of K. Reali and E. Batsel of Stearns Weaver, Dan Sefair and others of Mize-Sefair and Henry Cramer and Frank Greco of Riverbend Civic Association from June 12, 2023 through July 21, 2023
- 16) Article, Tampa Bay Business Journal, October 11, 2021 “Tampa developers see ‘very long runway’ in built to rent single-family homes”
- 17) Presentation, Stearns Weaver Miller, Updated September 26, 2023, “Senate Bill 102: How the “live Local Act” incentivizes Affordable and Workforce Housing in the State of Florida”
- 18) Article, Tampa Bay Times, February 19, 2024, “Federal Judge ends Florida’s oversight on wetland development”
- 19) Memorandum of September 29, 2023, from Stearns Weaver to City of Tampa Development Coordination Development & Growth Management as a DRC Response and Additional Documentation re Rezoning Application REZ-23-10
- 20) IMG -0050.mov taken Jan 18th 2024 10:58 am
- 21) IMG-0062.mov taken Jan 23rd 2024 12:07 pm
- 22) IMG-0063.mov taken Jan 23rd 2024 12:10 pm
- 23) IMG-0137.mov taken Jan 31st 2024 10:26 am
- 24) IMG-0250.mov taken Feb 26th 2024 11:16 am
- 25) IMG-0140.mov taken Feb 31st 2024 10:32 am
- 26) IMG-0250.mov
- 27) IMG.0258.jpeg. Southwest Florida Water Management District Map of Property

- 28) Alpha Surveying ALTA/NPSP Survey for 6111 N Rome Avenue
- 29) Alpha Surveying Boundary, Topography, & Tree Survey for 6111 N Rome Avenue
- 30) Country Walk Subdivision (Wesley Chapel, FL) Aerials (2 aerials)
- 31) EPC Review 72169 for 1797 W. Hillsborough Avenue, Tampa
 1. Wetland Boundary Survey
 2. Approved Site Plan

APPELLEES' EXHIBITS:

- 1) Fox Branch Mitigation Bank Service Area Map
- 2) Mitigation Reservation and Sale Agreement
- 3) Affidavit of Benjamin A. Allushuski dated March 20, 2024

WITNESSES

APPELLANTS' WITNESSES:

- 1) Michael Addison
1304 Alicia Avenue
Tampa, FL 33604;
- 2) Henry Cramer
5933 N Rome Ave
Tampa, FL 33604;
- 3) Frank Greco
5440 N. River Shore Drive
Tampa, FL 33603;
- 4) Linda Parups
1420 Alicia Avenue
Tampa, FL 33604;
- 5) C.J. Greene
Meryman Environmental
10408 Bloomingdale Ave.
Riverview, FL 33578
- 6) Witnesses listed by Appellees

APPELLEES' WITNESSES:

- 1) Abigail Bridges (expert witness)
Environmental Scientist III, Wetlands Division
EPC of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619;
- 2) Kimberly Tapley (expert witness)
Senior Environmental Manager, Wetlands Division
EPC of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619;
- 3) Lindsay Brock (expert witness)
Senior Environmental Scientist, Wetlands Division
EPC of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619;
- 4) Dale Meryman, III (expert witness)
Chairman and President
Meryman Environmental, Inc.
10408 Bloomingdale Ave
Riverview, FL 33578;
- 5) Daniel R. Sefair (lay witness)
Sole Member, Manager (Applicant)
6111 Rome, LLC
15905 Danboro Court
Tampa, FL 33647;
- 6) Jay Mize (expert witness)
President, M&S Dev, LLC
3614 S. Renellie Dr.
Tampa, FL 33629;
- 7) Braulio Grajales, P.E. (expert witness)
Principal
High Point Engineering, Inc.
5005 W. Laurel Street, Suite 201
Tampa, FL 33607;

**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 6111 Rome owns the subject property, identified as Folio # 103439-0000, with a physical address of 6111 N Rome Avenue, Tampa, FL and consists of 4.66 acres (“Property”).

2. The Property is located at the intersection of W Hanna Avenue and N Rome Avenue and to the west of the Hillsborough River.

3. Appellant Cramer owns and resides on the residential property at 5933 N. Rome Avenue which is adjacent to the south of the Property and located on the bank west of the Hillsborough River.

4. Appellant Michael Addison owns and resides on the residential property at 1304 Alicia Ave which is 0.6 miles north of the Property.

5. Appellant Frank Greco owns and resides on the residential property at 5440 N River Shore Drive which is south of the Property.

6. Appellant Linda Parups owns and resides on the residential property on Alicia Ave.

7. The City of Tampa owns property directly adjacent bordered on three sides to the Property identified as Folio #103439-0100, with physical address of 1502 W Hanna Ave, Tampa (“COT Property”).

8. On July 5, 2023, Appellee 6111 Rome submitted a Wetland Impact with Mitigation Application (“Impact Application”) to EPC proposing 0.25 acre of wetland impacts.

9. EPC staff Abigail Bridges conducted a site inspection of the Property on August 18, 2023, accompanied solely by C.J. Greene (formerly employed by Meryman Environmental, Inc.).

10. On August 2, 2023, Ms. Bridges issued a Request for Additional Information (“RAI”).

11. On August 28, 2023, 6111 Rome provided an RAI response to EPC.

12. After the RAI, the Impact Application was amended and reduced proposed impacts for a total wetland impact of approximately 0.12 acres.

13. EPC Executive Director issued the Wetland Impact with Mitigation Authorization #77492 on November 3, 2023.

14. According to the Southwest Florida Water Management District (SWFWMD) wetland boundary determination, there are two wetlands within the boundary of the Property: Wetland 1 and Wetland 2.

15. According to the SWFWMD wetland boundary determination, Wetland 1 is located near the center of the Property.

16. According to the SWFWMD wetland boundary determination, Wetland 2 is located on the eastern border of the Property along the Hillsborough River.

17. The vegetation in Wetland 1 identified by EPC staff Ms. Bridges includes but is not limited to *Casuarina equisetifolia*, *Cinnamomum camphora*, *Wedelia trilobata*, *Schinus terebinthifolia*, and *Leucaena leucocephala*.

18. EPC was established by the state legislature in 1967.

19. Section 1-1.01, Declaration of Intent, states “it is the intent of the Commission to provide for the protection or enhancement of the environment of Hillsborough County.”

20. The EPC's mission statement is "to protect our natural resources, environment, and quality of life in Hillsborough County."

21. The EPC's vision statement is "environmental excellence in a changing world."

22. The EPC's values are "environmental stewardship, integrity, transparency, and accountability."

23. 6111 Rome acquired the required credits for mitigation of the wetland impact from the Fox Branch Mitigation Bank.

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

1. That there are two separate wetlands on the site. The surface water flow from Wetland 1 does not stop at City of Tampa property as applicant alleges. The flow continues through to the Hillsborough River. This contiguous flow is through the area designated as Wetland 2, making the two wetlands contiguous, therefore one wetland. This fact then would determine that the UMAM is incorrect.

2. Whether a spring exists within Wetland 1.

3. Whether it is necessary to disturb the wetland to profitably develop the site. No alternate plans have been provided that would "save" the wetland.

4. The location of the proposed mitigation area, Fox Branch, though on the Hillsborough River, is located outside of Hillsborough County where other acceptable mitigation banks exist at the COT Property.

5. The applicant (in the application process) has not demonstrated adequate protection for the Hillsborough River, despite the proposed mitigation.

6. The delineation was incomplete or improperly evaluated because it did not take into account the adjacent property that is owned by the City of Tampa.

The parties do not waive any rights to object to any jurisdictional, scope, relevancy, or other objections to these Disputes Issues of Fact.

STIPULATED ISSUES OF LAW: A concise statement of those issues of applicability of the EPC Act and Ch. 1-11 Rules of the EPC, 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).

7. The proposed impact to wetlands is considered "development" as defined by Section 1-11.02(2)(b), Rules of the EPC.

8. Development requires written authorization by the EPC Executive Director pursuant to Section 1-11.05, Rules of the EPC.

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

1. The issuance of written authorization was given by the Executive Director despite the fact that reasonable use for the construction of residential housing could be accomplished without affecting the wetland. Therefore, the benefits provided by the wetland are not adequately protected.

2. Whether Rome 6111 provided EPC reasonable assurance the activity complied with Section 1-11.07, Rules of the EPC.

3. Whether Rome 6111 provided EPC reasonable assurance the activity complied with Section 1-11.09(2), Rules of the EPC.

4. Whether sections 1-11.01, 1-11.10 and 1-11.11, Rules of the EPC, contain specific criteria applicable to the Impact Application.

The parties do not waive any rights to object to any jurisdictional, scope, relevancy, or other objections to these Disputes Issues of Law.

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 Ch. 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

There are two motions pending before the Hearing Officer that may limit the issues heard at the final evidentiary hearing. The two motions pending are as follows:

1. Appellees 6111 Rome LLC and EPC’s Motion for Summary Recommended Order in Part as to Sections 1-11.01, 1-11.05, 1-11.10, and 1-11.11.
2. Appellees 6111 Rome LLC and EPC’s Joint Motion to Dismiss Claims brought by Appellant Linda Parups

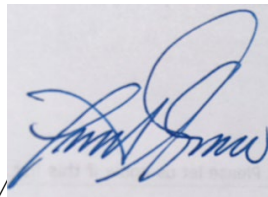
ESTIMATED LENGTH OF TIME REQUIRED FOR HEARING

The parties anticipate the hearing can be concluded in 1 day per the Order Setting Final Evidentiary Hearing and Prehearing Instructions rendered February 8, 2024.

Respectfully submitted this 17 day of April 2024.

/s/ Beth Le

Beth Le, Esq.
Counsel for EPC



/s/

Frank Greco

/s/ Jeffrey Collier

Jeffrey Collier, Esq.
Jessica Icerman, Esq.

/s/ Linda Parups

Linda Parups

/s/ Michael Addison

Michael Addison

/s/ Henry Cramer

Henry Cramer

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

FRANK J. GRECO,

Appellant,

vs.

EPC Case No. 23-EPC-009

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

LINDA PARUPS,

Appellant,

vs.

EPC Case No. 23-EPC-011

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

MICHAEL C. ADDISON,

Appellant,

vs.

EPC Case No. 23-EPC-013

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

HENRY CRAMER,

Appellant,

vs.

EPC Case No. 23-EPC-016

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

RECOMMENDED ORDER
WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

On May 13, 2024, a final evidentiary hearing in the above-captioned matter was held in Tampa, Florida, by Thomas A. Thanas, Esquire, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter “EPC”), on Appellant Frank Greco (“Appellant Greco”), Appellant Linda Parups (“Appellant Parups”), Appellant Michael Addison (“Appellant Addison”), and Appellant Henry Cramer’s (“Appellant Cramer”) (collectively, the “Appellants”) respective Notices of Appeal of the Wetland Impact with Mitigation Plan Authorization #77492, executed by the EPC Executive Director on November 3, 2023, authorizing the applicant 6111 Rome LLC to impact wetlands in Hillsborough County.

APPEARANCES

For Appellants: Pro Se

For EPC Executive Director: Ruth “Beth” Le, Esq.
T. Andrew Zodrow, Esq.
Environmental Protection Commission of Hillsborough County
3629 Queen Palm Dr.
Tampa, FL 33619

For 6111 Rome LLC: Jeffrey Collier, Esq.
Jessica Icerman, Esq.
Nicholas Sanders, Esq.
Stearns, Weaver, Miller

401 East Jackson Street, Ste. 2100
Tampa, Florida, 33602

STATEMENT OF THE ISSUE

The issues to be determined in this appeal are (1) whether the Wetland Impact with Mitigation Authorization #77492 was properly issued under Section 1-11.07 and Chapter III of the Basis of Review, Rules of the EPC, which permits impacts to wetlands “only if reasonable use of the land cannot be accomplished” without affecting the wetland; (2) whether the Impact Permit was properly issued under Section 1-11.09, Rules of the EPC, which requires “adequate protection of the environmental benefits” of the wetland through certain means, such as a mitigation plan as provided in Section 1-11.08, Rules of the EPC; and (3) whether the Impact Permit was properly issued under Section 1-11.09(2), which requires consideration of the “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.”

PRELIMINARY STATEMENT

On July 5, 2023, Appellee 6111 Rome LLC (“6111 Rome” or “Applicant”) submitted to the EPC Executive Director an Application for a Wetland Impact and Mitigation (“Impact Application”) for the purpose of impacting 0.25 acres of wetlands on the property located at 6111 N. Rome Avenue, Tampa, Hillsborough County, Florida (the “Property”). The EPC reviewed the application under applicable sections of Chapter 1-11, Rules of the EPC (the “Wetlands Rule”) and Chapter III of the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands (“Basis of Review” or “BOR”) adopted within Section 1-11.06(2), Rules of the EPC. After the EPC issued a Request for Additional Information, the Impact Application was amended to reduce the proposed impacts for a total wetland impact of approximately 0.12 acres.

On November 3, 2023, the EPC Executive Director issued a Wetland Impact with Mitigation Authorization #77492 (“Impact Permit”), approving approximately 0.12 acres of wetland impact pursuant to Sections 1-11.07, 1-11.08, and 1-11.09, Rules of the EPC. The Impact Permit authorized the Applicant to impact approximately 0.12 acres of wetlands, identified as “Wetland 1,” and to mitigate for this impact by purchasing mitigation bank credits. A Notice of Appeal challenging the Impact Permit was submitted by the Appellant Greco on November 20, 2023. Amended Notices of Appeal challenging the Impact Permit were submitted by the Appellants Parups, Addison, and Cramer on December 19, 2023, December 20, 2023, and December 20, 2023, respectively.

By Order of the Hearing Officer, the parties were given ten (10) days from the date of filing of the transcript in which to file proposed recommended orders and argument. Transcript Page Number 209 [hereinafter (Tr. p 209)]. The transcript was provided and filed May 31, 2024. As such, the due date for proposed recommended orders was established as June 10, 2024. Appellees’ Joint Proposed Recommended Order was timely filed on June 10, 2024. On June 10, 2024, Appellant Parups submitted a five-paragraph email with comments in support of her challenge to the Impact Permit. On June 10, 2024, Appellant Cramer submitted an 11-page memorandum captioned “Proposed Recommended Orders” which summarized his position challenging the Impact Permit.

WITNESSES AND EXPERTISE

Appellee EPC called Abigail Bridges, who was accepted as an expert in the application of the EPC’s wetland regulations, and more specifically in Chapter 1-11 and the Basis of Review for the purposes of wetland impact permitting (Tr. p 36, lines 7-19). Appellee 6111 Rome called Dr. Dale Meryman as a fact witness (Tr. p. 191, lines 24-25). The Appellants all provided

statements on behalf of themselves as fact witnesses.

EXHIBITS

Joint Exhibits 1 through 6, including all subparts, were accepted into evidence at the beginning of the proceeding (Tr. p. 12-16). Joint Exhibit 1 included fourteen (14) judicial notice documents, comprised of the Hillsborough County Environmental Protection Act, Chapter 84-466, Laws of Florida; Rules of the EPC Chapter 1-2, Administrative Procedures; Rules of the EPC Chapter 1-11, Wetlands; the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11; and a number of EPC Final Orders (Tr. p. 12-13). Joint Exhibits 2 through 6 contained the subject Impact Application; EPC Site Inspection Report #77492, dated August 18, 2023; an EPC Request for Additional Information (“RAI”), dated August 2, 2023; Appellee 6111 Rome’s RAI Response, including correspondence and emails; and the subject Impact Permit (Tr. p 14).

The Appellants collectively entered thirteen (13) exhibits into evidence. Specifically, Appellants entered exhibits identified in the Joint Prehearing Stipulations as follows: one portion of Appellants’ Exhibits 5 (Stearns Weaver Miller Share File RFP 1-6) (Tr. p. 117); Appellants’ Exhibits 20 through 25 (Videos Created by Appellant Linda Parups) (Tr. p. 153-154); Appellants’ Exhibit 27 (Southwest Florida Water Management District Map of Property) (Tr. p. 154); Appellants’ Exhibit 28 (alpha Surveying ALTA/NPSP Survey for 6111 N Rome Avenue) (Tr. p. 144-145); Appellants’ Exhibit 29 (Alpha Surveying Boundary, Topography, & Tree Survey for 6111 N Rome Avenue) (Tr. p. 144-145); and Appellants’ Exhibit 30 (Country Walk Subdivision (Wesley Chapel, FL) Aerials (2 aerials)) (Tr. p. 142-143). Additionally, Appellants entered two new exhibits not previously identified in the Joint Prehearing Stipulation: Appellants’ Exhibit 32 (University of South Florida PowerPoint: Community-Based Design

Using Nature-Based Solutions) (Tr. p. 179); and Appellants' Exhibit 33 (Compilation of Exhibits with Commentary by Appellant Frank Greco) (Tr. p. 195).

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 April 17, 2024, hereinafter "JPHS" page 18).

2. 6111 Rome owns the subject property, identified as Folio #103439-0000, with a physical address of 6111 N Rome Avenue, Tampa, FL and consists of 4.66 acres ("Property"). (JPHS, page 15).

3. The Property is located at the intersection of W Hanna Avenue and N Rome Avenue and to the west of the Hillsborough River. (JPHS, page 15).

4. On July 5, 2023, Appellee 6111 Rome submitted a Wetland Impact with Mitigation Application ("Impact Application") to EPC proposing 0.25 acre of wetland impacts. (JPHS, page 15).

5. EPC staff Abigail Bridges conducted a site inspection of the Property on August 18, 2023, accompanied solely by C.J. Greene (formerly employed by Meryman Environmental, Inc.). (JPHS, page 16).

6. On August 2, 2023, Ms. Bridges issued a Request for Additional Information ("RAI"). (JPHS, page 16).

7. On August 28, 2023, 6111 Rome provided an RAI response to EPC. (JPHS, page 16).

8. After the RAI, the Impact Application was amended and reduced proposed impacts for a total wetland impact of approximately 0.12 acres. (JPHS, page 16).

9. EPC Executive Director issued the Wetland Impact with Mitigation Authorization #77492 on November 3, 2023. (JPHS, page 16).

10. According to the Southwest Florida Water Management District (SWFWMD) wetland boundary determination, there are two wetlands within the boundary of the Property: Wetland 1 and Wetland 2. (JPHS, page 16).

11. According to the SWFWMD wetland boundary determination, Wetland 1 is located near the center of the Property. (JPHS, page 16).

12. According to the SWFWMD wetland boundary determination, Wetland 2 is located on the eastern border of the Property along the Hillsborough River. (JPHS, page 16).

13. The wetland boundary determination established by the Southwest Florida Water Management District identifying two separate wetlands on the Property is binding on the EPC pursuant to section 373.421, F.S. (Tr. p. 41, lines 3-12).

14. Expert witness Abigail Bridges did not identify a spring located on the wetland proposed for impact, but testified that a spring is a type of wetland that is afforded no special protections beyond those that apply to other types of wetlands. (Tr. p. 42-43).

15. The vegetation in Wetland 1 identified by EPC staff Ms. Bridges includes but is not limited to *Casuarina equisetifolia*, *Cinnamomum camphora*, *Wedelia trilobata*, *Schinus terebinthifolia*, and *Leucaena leucocephala*. (JPHS, page 16).

16. Based on the plant communities observed on site, the wetland proposed for impact is a forested freshwater system. (T. p 42, lines 1-11).

17. An applicant for a wetland impact permit need not meet every “reasonable use” factor contained within the Basis of Review. (Tr. p. 44, lines 1-13).

18. The Applicant provided justification for reasonable use factors 3.2.1(a), (j), and (k), regarding the consideration of zoning, safety, and any other special circumstances affecting the development of a parcel . (Tr. p. 44, lines 17-22, p. 48, lines 10-14).

19. With respect to reasonable use factor 3.2.1(a), expert witness Abigail Bridges testified that the current zoning allows for a high density residential development. (Tr. p. 45, lines 4-11).

20. With respect to reasonable use factor 3.2.1(j), expert witness Abigail Bridges testified that the wetland impact would be necessary to allow for a “turnaround” for emergency vehicle ingress and egress. (Tr. p. 46-47).

21. The adjacent public lift station blocks the ability to construct secondary ingress/egress to access the northern townhome units for emergency vehicles. The Fire Marshall requires an ingress/egress or a turnaround area. (Joint Exhibit 2.a., page 7).

22. With respect to reasonable use factor 3.2.1(j), expert witness Abigail Bridges testified that reducing the wetland impact to just the portion required for the turnaround would hydrologically choke off the remainder of the wetland and would be a secondary impact the Applicant would have to mitigate for. (Tr. p. 46-47).

23. With respect to reasonable use factor 3.2.1(k), expert witness Abigail Bridges testified that special circumstances included the type of soils present on the Property (upland soils) and that the wetland system was previously a stormwater ditch that has since been rerouted. (Tr. p. 47-48).

24. 6111 Rome acquired the required credits for mitigation of the wetland impact from the Fox Branch Mitigation Bank. (JPHS, page 17).

25. Fox Branch Mitigation Bank is located predominantly within Polk County, Florida. (Tr. p 56, lines 17-19).

26. Fox Branch Mitigation Bank is within the same drainage basin as the proposed wetland impact. (Tr. p 56, lines 17-19).

27. Reasonable attempts to locate mitigation within Hillsborough County include credit availability, credit type and amount, and cost of the credit. (Tr. p. 57, lines 14-21).

28. 6111 Rome demonstrated reasonable attempts to mitigate in Hillsborough County, but due to mitigation credit availability and cost, mitigation credits were purchased from a mitigation bank outside of Hillsborough County (Tr. p 192-193).

29. 6111 Rome acquired freshwater forested mitigation bank credits. (Tr. p. 52, lines 19-21).

30. Secondary impacts are those indirect impacts to adjacent wetlands and other surface waters that are identified for the purposes of mitigation. (Tr. p. 53-4).

31. No secondary impacts are anticipated to the Wetland 2 on the Property or the adjacent wetland offsite (City of Tampa property) because the wetland offsite and Wetland 2 still maintain a connection to the Hillsborough River. (Tr. p. 55, lines 16-18; p. 78, lines 1-2).

32. 6111 Rome's RAI response describes that secondary impacts are not anticipated to the adjacent wetland on City of Tampa property. (Tr. p. 55 lines 7-15; Joint Exhibit 5C).

33. Consideration of cumulative impacts are consideration of the combined effect of wetland impacts in the same area. (Tr. p. 29, lines 20-24).

34. The consideration of cumulative impacts does not require an extensive review of all the wetlands impact projects in the surrounding area. (Tr. p. 59-60).

35. Mitigation within the same drainage basin is a consideration that can “offset” cumulative impacts. (Tr. p. 61, lines 6-20).

36. EPC does not establish the mitigation drainage basins. (Tr. p. 58, lines 11-13).

37. Drainage basins are established by the State. (Tr. p. 58, lines 11-13).

38. The proposed wetland impacts on site were minimized from 0.25 acres to 0.12 acres. (JPHS p. 15 and 16).

39. In the expert witness Abigail Bridges’ opinion and to a reasonable degree of certainty, the applicant reduced the wetland impact to the minimum amount necessary under the Basis of Review. (Tr. p. 109, lines 13-19).

40. In the expert witness Abigail Bridges’ opinion and to a reasonable degree of certainty, the subject Impact Permit along with the conditions contained therein, provide reasonable assurance that the proposed wetland impact application with mitigation meets the EPC Wetland Rule Ch 1-11, including the Basis of Review. (Tr. p 62, lines 16-23).

41. In the expert witness Abigail Bridges’ opinion and to a reasonable degree of certainty, the subject Impact Permit along with the conditions contained therein, provide reasonable assurance that the proposed wetland impact application with mitigation meets the EPC Wetland Rule Ch 1-11, specifically 1-11.07 as it relates to the whether “reasonable use of the land cannot be accomplished without affecting the wetland.” (Tr. p 61-62).

42. In the expert witness Abigail Bridges’ opinion and to a reasonable degree of certainty, the subject Impact Permit along with the conditions contained therein, provide reasonable assurance that the proposed wetland impact application with mitigation meets the

EPC Wetland Rule Ch 1-11, specifically 1-11.09 as it relates to whether the environmental benefits provided by the effected wetland are adequately protected. (Tr. p 62, lines 5-14).

CONCLUSIONS OF LAW

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

2. 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, and any person whose protected interests 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.

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. The burden of proof and burden-shifting standard in such a proceeding is properly set forth in 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).

7. Once the applicant meets its initial burden, the burden shifts to the objecting party "to present competent substantial evidence, consistent with the allegations of the petition, that the applicant is not entitled to the permit." Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011). This contrary evidence must be of "equivalent quality" to that presented by the applicant in its prima facie case. Florida Dept. of Transp. v. J.W.C. Co., 396 So. 2d 778, 780 (Fla. 1st DCA 1981). The challenger of such a permit has the ultimate burden of persuasion. *See* Section 120.569(2)(p), Florida Statutes.

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

9. 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.

10. The proposed impact to wetlands is considered “development” as defined by Section 1-11.02(2)(b), Rules of the EPC.

11. Section 1-11.01, Rules of EPC, does not warrant reversal of the Wetland Impact Permit with Mitigation Plan Authorization #77492. *Order Granting MSRO in Part*, May 4, 2024.

12. Section 1-11.05, Rules of the EPC, does not warrant reversal of the Wetland Impact Permit with Mitigation Plan Authorization #77492. *Order Granting MSRO in Part*, May 4, 2024.

13. Section 1-11.10, including subsection 1-11.10(3)(b), Rules of the EPC, pertains solely to the limited types of wetland impact activities that qualify for a Miscellaneous Activities in Wetlands (MAIW) authorization under that specific section because MAIW are of nominal consequence to wetlands and other surface waters and the section does not warrant reversal to the Wetland Impact Permit with Mitigation Plan Authorization #77492. *Order Granting MSRO in Part*, May 4, 2024.

14. Section 1-11.11, including subsection 1-11.11(2)(c), Rules of the EPC, pertains solely to the qualifying exempt activities under that specific section and the section does not warrant reversal of the Wetland Impact Permit with Mitigation Plan Authorization #77492. *Order Granting MSRO in Part*, May 4, 2024.

15. 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].”

16. 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].”

17. 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.

18. Section 3.2.1 of the Basis of Review further addresses the criteria that may be considered to determine whether “reasonable use” of the land can be made without affecting the wetland pursuant to section 1-11.07.

19. An applicant for a wetland impact permit need not meet every “reasonable use” factor contained within the Basis of Review.

20. Section 3.2.1(a) of the Basis of Review states that consideration may be made as to “[t]he current zoning of the parcel of property, at the time of submittal of the application, on which the wetland or other surface water is located” to determine whether “reasonable use” can be made of the property without affecting the wetland.

21. Section 3.2.1(j) of the Basis of Review states that consideration may be made as to “[w]hether the impact is necessary for the protection of public health and safety” to determine whether “reasonable use” can be made of the property without affecting the wetland.

22. Section 3.2.1(k) of the Basis of Review states that consideration may be made of “[a]ny other pertinent information or special circumstances affecting the development of the parcel of property, including but not limited to, any unusual topography and fill requirements, or unique engineering requirements,” to determine whether “reasonable use” can be made of the property without affecting the wetland.

23. Springs are a subset of wetlands and are afforded no special protection with specific criteria under EPC Chapter 1-11 or the Basis of Review.

24. Expert witness Abigail Bridges testified that the Applicant met reasonable use factors 3.2.1(a), (j), and (k) demonstrating that reasonable use of the land could not be accomplished without affecting the wetland based on justification related to zoning, safety, and other special circumstances such as the historical nature of the wetland system being a stormwater ditch and located in upland soils.

25. Appellees have provided competent, substantial evidence through the expert testimony of EPC staff Abigail Bridges, that reasonable use could not be made of the subject property without impacting the wetland, looking to Sections 3.2.1(a), (k), and (j) of the Basis of Review.

26. Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by Appellees' expert witness. Appellants did not provide any contrary expert testimony addressing the reasonable use factors that supported the determination by EPC that the applicant provided reasonable assurance that reasonable use of the land could not be accomplished without affecting the wetland. Specifically, Appellants' presentation of evidence regarding "reasonable use" was limited to their own lay testimony.

27. Section 1-11.07, Rules of EPC, as interpreted in conformity with the Basis of Review, does not warrant reversal of the Impact Permit.

28. Section 1-11.09(1)(b), Rules of the EPC provides the following:

Only development under the following circumstances shall be determined to provide adequate protection of the environmental benefits: ... (b) Where an acceptable and appropriate mitigation plan, pursuant to section 1-11.08, will adequately protect the environmental benefits provided by the affected wetland;

29. Section 1-11.08, Rules of the EPC, expands on the requirements of an appropriate mitigation plan. Specifically, subsection (7) permits an applicant for wetland impacts to purchase “mitigation credits from a fully permitted wetland mitigation bank or through the use of an offside regional mitigation area.” Subsection (7) also provides that “reasonable attempts shall be made to locate this mitigation effort within the geographic boundaries of Hillsborough County.”

30. 6111 Rome has provided adequate protection of environmental benefits through the purchase of freshwater forested mitigation bank credits at Fox Branch Mitigation Bank, which serves the Hillsborough River Basin Service Area.

31. Chapter 373.4135(2), Florida Statutes, prohibits local governments from denying the use of a mitigation bank due to its location outside of that local government’s own jurisdiction.

32. 6111 Rome demonstrated reasonable attempts to mitigate in Hillsborough County, but due to mitigation credit availability and cost, mitigation credits were purchased from a mitigation bank outside of Hillsborough County.

33. Appellees have presented competent substantial evidence, through the introduction of the Impact Application, Impact Permit, expert testimony by Abigail Bridges and testimony of Dale Meryman, that an acceptable and appropriate mitigation plan will provide “adequate protection to the environmental benefits” of the wetland in accordance with Section 1-11.09(1), Rules of EPC.

34. Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by the Appellees’ expert witness Abigail Bridges and testimony by Dale Meryman. Specifically, Appellants did not provide any contrary expert testimony, regarding “adequate protection” relating to the mitigation plan pursuant to section 1-11.08. Appellants’ presentation of evidence was limited to their own lay testimony that the

mitigation credits *should* be located in Hillsborough County when EPC rules and state law do not make that requirement.

35. Section 1-11.09(1), Rules of the EPC, does not warrant reversal of the Impact Permit because the applicant provided reasonable assurance the environmental benefits are adequately protected by an acceptable and appropriate mitigation plan that requires the purchase of mitigation bank credits which offset the functional loss of the impacted wetland.

36. Section 1-11.09(2), Rules of the EPC requires that 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.” This consideration does not require an extensive review of each and every wetland in the surrounding area. Further, the purchase of mitigation bank credits located within the same drainage basin as the wetland impact can offset cumulative impacts to the drainage basin.

37. Consideration of cumulative impacts pursuant to section 1-11.09(2) does not require an extensive review of each and every wetland in the surrounding area.

38. The use of mitigation banking within the same basin as the wetland impact may be taken into consideration to offset or reduce any potential cumulative impacts.

39. Appellees have presented competent substantial evidence, through the expert testimony of EPC staff Abigail Bridges, and the entry of the parties’ Joint Exhibits into evidence, that consideration was made of cumulative impacts pursuant to Section 1-11.09(2), Rules of EPC.

40. Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by the Appellees’ expert witness regarding “adequate protection” related to cumulative impacts. Specifically, expert witness Abigail Bridges testified

that consideration of cumulative impacts was made. Appellants' presentation of evidence was limited to their own lay testimony and did not contradict Appellees' expert witness testimony.

41. 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 778, 789-790 (Fla. 1st DCA 1981).

42. 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).

43. 6111 Rome and 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 proposed wetland impact satisfies the applicable rules for authorization. Therefore, the burden shifted to the Appellant to present “contrary evidence of equivalent quality” that the Impact Permit did not comply with EPC’s rules. Florida Dept. of Transp. v. J.W.C. Co., Inc., 396 So.2d at 789.

44. No third party, merely by filing a petition seeking an administrative hearing after an agency has indicated its intent to issue permit, should be permitted to require applicant to “completely prove anew” all items in application down to last detail. *Id.* Instead, that third party “must identify the areas of controversy and allege a **factual basis** for the contention that the facts relied upon by the applicant fall short of carrying the ‘reasonable assurances’ burden cast upon the applicant.” *Id.* (emphasis added).

45. The Appellants failed to meet their 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 Impact Permit complies with Chapter 1-11, Rules of the EPC and the Basis of Review.

46. Appellant Parups email dated June 10, 2024, and the “Proposed Recommended Orders” submitted by Appellant Cramer do not meet the requirements for a recommended order as set forth in Section 1-2.34 of the Rules of the Environmental Protection Commission of

Hillsborough County. Section 1-2.34 requires the Hearing Officer to submit a Recommended Final Order that is comprised of the following:

The recommended order to be considered by the Commission shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law (separately numbered and stated), and a recommendation for final agency action based upon the evidence submitted to the Hearing Officer and based upon applicable laws and rules.

Neither proposal from the Appellants met the form or substance of the order that the Hearing Officer is required to submit to the members of the Environmental Protection Commission of Hillsborough County. Therefore, neither proposal could be considered by the Hearing Officer as a suitable recommendation for a final order to be submitted by the Commission.

RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order upholding the November 3, 2023, Wetland Impact Permit with Mitigation Plan Authorization #77492.

Respectfully submitted,

Dated: June 19, 2024

Thomas A. Thanas

**Thomas A. Thanas, Esquire
EPC Hearing Officer
Dye Harrison Knowles Kirkland Pratt &
DePaola,
1206 Manatee Ave. West
Bradenton, FL 34205
(941) 866-8376 (direct)
tthanas@dneharrison.com**

DISTRIBUTION LIST

Frank J. Greco (Case No. 23-EPC-009) at fgreco@verizon.net
Linda Parups (Case No. 23-EPC-011) at lparups@verizon.net
Michael C. Addison (Case No. 23-EPC-013) at mca2175@hotmail.com
Henry Cramer (Case No. 23-EPC-016) at HCramer@Risk-Strategies.com
and HankCramer71@gmail.com

Jeffrey Collier (Co-counsel for Appellee 6111 Rome LLC) at jcollier@stearnsweaver.com
Jessica Icerman (Co-counsel for Appellee 6111 Rome LLC) at jicerman@stearnsweaver.com
Nicolas Sanders (Co-counsel for Appellee 6111 Rome LLC) at nsanders@stearnsweaver.com
Ruth “Beth” Le, Esq. (Counsel for Appellee EPC) at leb@epchc.org
Jeannette Figari (EPC Legal Administrative Assistant) at figarij@epchc.org

From: [Frank Greco](#)
To: [Legal Clerk](#); [Le, Beth](#); [Jessica Icerman](#); [Jeffrey Collier](#)
Cc: [Hank Cramer](#); [Michael Addison](#); [Linda Parups](#); [Figari, Jeannette](#); [Nicholas Sanders](#); [Zodrow, Andy](#)
Subject: Response to Recommendation of the hearing officer Re. 6111 Rome LLC
Date: Friday, June 28, 2024 1:14:46 PM

External email: Use caution when clicking on links, opening attachments or replying to this email.

EPC

Thank you for the opportunity to respond to the Recommended Final Order.

After reading the final order I would like to respectfully object to items of the recommendation and respond to the the following observations:

FINDINGS OF FACT

Item 1, 9, 33, 34 **EPC is authorized to enforce Chap 84-446 Wetland Rule.**

In the Riverbend Community there have been three requests to mitigate existing wetland areas within less than one half of a mile in distance. All three requests were approved without review and evaluation of the impact or total loss considerations. Mitigation is a loss to the immediate community and not preservation within Riverbend.

Item 5, 14 **Abigail Bridges and C.J. Greene inspected site and reportedly did not**

identify a spring within the wetland. Testamony from Linda Parups with a video presentation indicated a flow of bubbling water at the center of the wetland and outfall to the Hillsborough River. C.J. Greene was unavailable for questioning.

Item 10, 13 **SWFMD indicates 2 wetlands.**

Exhibits were included in evidence that Merriman Environmental stated that there was one wetland that was connected and flowed to the Hillsborough River. This was supported by a SWFTMD document that stated that it appeared that wetland 1 and 2

were connected.

Item 16 Plant communities were in a "forested fresh water system"

It appears that the evidence produced by the Environmental agency does not indicate the source of the fresh water and was never determined. This may have been a crucial element to preserving the wetland.

Item 19, 20 Abigail Bridges indicated that the zoning was high-density multi family.

Abigail Bridges testified under oath that she was not proficient in zoning. In fact, the property is zoned RS-50 which is a single family detached dwelling allowing only one residence on the property. This is why the developer is seeking a zoning change with the City of Tampa to allow multifamily density.

Item 20 Abigail Bridges indicated that the "turnaround" would be insufficient for emergency vehicles if the wetland was not mitigated to allow the proper geometry for Fire/Rescue and sanitation equipment.

It was already established that Ms. Bridges was not proficient in zoning and furthermore qualifications were not presented for her knowledge in Transportation and Fire requirements. It was unclear if Ms. Bridges saw any other possibilities for development plans that preserved the wetland.

Item 27 Rome LLC designated reasonable attempts to acquire mitigation credits and control costs.

Abigail Bridges testified under oath that "cost" is not a criteria in the EPC wetland rules.

CONDITION OF LAW

Item 40 Appellants failed to meet the burden of providing competent evidence. Presented evidence was limited to their own lay testimony.

Appellants testimony was from trained professionals in Law, City of Tampa Zoning, Site review, and Insurance.

Thank you,
Frank J Greco

From: [Cramer, Hank](#)
To: [Legal Clerk](#)
Cc: [Le, Beth](#); [Jessica Icerman](#); [FRANK GRECO](#); [Michael Addison](#); lparups@verizon.net
Subject: 6111 Rome and EPC vs. Appellants Case No. 23-EPC-09/016 Exception to HO PRO
Date: Saturday, June 29, 2024 4:57:22 PM

External email: Use caution when clicking on links, opening attachments or replying to this email.

Undertaking the task of appealing an authorization of the Executive Director may be considered by many a fool's errand. Certainly, the Executive Director, utilizing all investigative tools available and requiring applicant compliance to detailed rules, regulations, and long regarded standards of the application process, would ably determine if all requirements are met to authorize impact and mitigation.

However, in the course of our de novo examination, our investigative efforts recognized that detail presented to the Executive Director have proved faulty, incomplete, erroneous, or dated. These factors, including that the main promulgator of the facts on the application and RAI responses were compiled by an ex-employee of the Environmental Engineer, who was released from employment due to a series of errors, indicate a much different set of facts than originally presented.

With the scope of the appeal and the range and charge of the Hearing Officer limited by EPC rule and definition, the Hearing Officer must have felt that after our prima facie round that our entire presentation would be neither competent nor substantive, he likely "knew where we were going: with our approach, a phrase he had used with appellants in previous discussions regarding options gilled, And this is likely why the hearing was abbreviated.

In the prehearing sidebar discussion of the format for the day (deemed

novel and unusual by the HO, as we had no witness to call) we suggested each appellant make a prima facie presentation followed by appellees opportunity to cross examine. Each appellant would then continue with the balance of our case. The transcript will indicate that the hearing was not conducted in this manner, though the HO agreed to our approach.

Only 13 of our 32 prepared exhibits were presented as insufficient time was allocated. A hearing originally scheduled for 8 hours was reduced to 4 with the promise of extension if necessary. The officer's need to get to St. Leo's that evening left us well short of completing our presentation.

Information that would have been presented include the debunking of the "Blowout Ditch" theory originally presented. An affidavit from Benjamin A. Allushuski, Senior Storm Water planning Engineer for the city of Tampa indicates that the storm water drainage pipes on the property were rerouted in 1973. The groundwater flowing on the property is therefore likely due to the presence of a spring associated and connected to other springs in the vicinity.

Other issues to have been presented would have corrected and clarified 'Wetland 1 making contact with Wetland 2' at the City of Tampa property.

Additionally, the failure of the expert witness to access Wetland 1 completely and her inability to observe flow of groundwater to the river would have been challenged more completely. Her testimony regarding fire department turnaround requirements could only be cited to the extent that it was viewed in Acela that the TFD statement was "truck clearance must be available as per code".

The point of this appeal and exception is to note that facts as originally presented are disputed by our de novo investigation. Discovery of such incongruencies must be considered in order to arrive at a safe and proper conclusion.

Analogously, in an insurance underwriter's frame of reference, a policy may be issued based on facts presented on an application by an agent and applicant. Subsequently, when during inspection or investigation, the risk differs from the presented exposure. Either additional premiums are due or the policy is cancelled.

We suggest the Commission and the Executive Director take the time to reconsider the new facts on hand and withdraw the authorization.

Respectfully Submitted,

Hank Cramer

Vice President - Producer

Risk Strategies

p 813-579-9867

hcramer@risk-strategies.com

2900 SW 149th Avenue, Suite 100 | Miramar, FL 33027

Riskstrategies.com

The information contained in this electronic message and any attachments hereto are intended for the exclusive use of the addressee(s) and may contain confidential, proprietary and/or privileged information. If you are not the intended recipient please notify the sender immediately, do not copy or disclose the information to anyone and destroy all copies of this message and any attachments. You may not rely on e-mail communication to report a claim or to give us instructions to place, bind, change or terminate coverage unless we have subsequently confirmed to you in writing that we have received your message and will be taking the action you requested.

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

FRANK J. GRECO,

Appellant,

vs.

EPC Case No. 23-EPC-009

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

LINDA PARUPS,

Appellant,

vs.

EPC Case No. 23-EPC-011

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

MICHAEL C. ADDISON,

Appellant,

vs.

EPC Case No. 23-EPC-013

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

HENRY CRAMER,

Appellant,

vs.

EPC Case No. 23-EPC-016

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

**APPELLEES 6111 ROME LLC AND ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY'S JOINT RESPONSE
TO APPELLANT HENRY CRAMER'S EXCEPTIONS**

6111 Rome LLC ("6111 Rome") and the Executive Director of the Environmental Protection Commission of Hillsborough County ("EPC" or "EPC Executive Director"), pursuant to Rule 1-2.35(b), Rules of the EPC, hereby respond to the filing made on June 29, 2024, by Appellant Henry Cramer ("Appellant Cramer") and states as follows:

Upon due notice, on May 13, 2024, a final evidentiary hearing in the above-captioned matter was held in Tampa, Florida by Thomas A. Thanas, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter "Commission"). The evidentiary hearing was based upon Appellant Cramer's and other appellants' Consolidated Appeal of the Wetland Impact with Mitigation Plan Authorization #77492 ("Impact Authorization") executed by the EPC Executive Director (hereinafter "Executive Director") on November 3, 2023, authorizing the applicant, 6111 Rome, to impact wetlands in Hillsborough County, Florida. The evidentiary hearing included the presentation of six (6) witnesses and the admittance of over 30 exhibits and sub-exhibits.

On June 19, 2024, the Hearing Officer entered a Recommended Order with 42 Findings of Fact and 46 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 the Impact 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 June 29, 2024, the Appellant Cramer filed a response purporting to be exceptions to the Recommended Order, pursuant to Section 1-2.35, Rules of the EPC.

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 Envtl. 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).

ROME 6111 and EPC RESPONSE

Pursuant to Section 1-2.35(a), Rules of the EPC, parties may file exceptions to the findings of facts and conclusions of law in a Recommended Order.

Section 1-2.35(a): The parties may file exceptions to findings of fact and conclusions of law contained in the Hearing Officer's recommended order to the Legal Department within 10 calendar days of entry of the recommended order. Exceptions shall be limited to challenge 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*. Copies shall be served on all parties. The Legal Department will distribute the exceptions and responses to the commissioners.

Appellant Cramer's filing on June 29, 2024, does not meet the specific criteria for exceptions in accordance with Section 1-2.35, Rules of the EPC. The response makes no specific

reference to evidence in the record through citation to the Transcript or admitted exhibits and no Findings of Fact or Conclusions of Law are identified for the Commission to reject, reverse, or modify in Appellant Cramer's filing. Appellant Cramer further alleges facts not contained in the record and requests the Commission consider new evidence.

The evidentiary hearing on May 13, 2024, was conducted by the Commission appointed hearing officer, Thomas A. Thanas. All parties were provided an opportunity to be heard through presenting individual testimony and calling witnesses. Specifically, Appellant Cramer provided testimony as noted at Transcript pages 111-129 and 159-175, and specifically entered into evidence various exhibits referenced in his testimony (Transcript pages 175-189). During the course of Appellants' individual testimonies, exhibits identified in the Joint Pre-hearing Stipulations and some not disclosed until the day of the hearing were offered as evidence by Appellants and ruled upon by the Hearing Officer. The Hearing Officer conducted such proceeding in a manner to afford due process to all parties. As long as any competent, substantial evidence supports the findings of fact set forth in the Recommended Order, the agency may not disturb such findings. Stokes v. State, Bd. Of Engineers, 952 So.2d 1124 (Fla. 1st DCA 2007). "An agency is not permitted to weigh the evidence, judge the credibility of witnesses or interpret the evidence to fit its ultimate conclusion." Packer v. Orange County School Bd., 881 So.2d 1204, 1207 (Fla. 5th DCA 2004). Nor may an agency supplement a recommended order with additional findings of fact. Bekiempis v. Dep't of Prof'l Regulation, 421 So.2d 693, 694 (Fla. 2d DCA 1982).

Based on the forgoing, 6111 Rome and the EPC Executive Director request the Commission not consider Appellant Cramer's response and affirm the Recommended Order rendered by the Hearing Officer on June 19, 2024, in this matter.

Respectfully submitted this 8th day of July 2024.

/s/ Beth Le

/s/ Jeffrey Collier

Ruth “Beth” Le, Esq.

Jeffrey Collier, Esq.

CERTIFICATE OF SERVICE

I CERTIFY that a true electronic copy was furnished to Frank J. Greco, Linda Parups, Michael C. Addison, and Henry Cramer (Appellants) at frgreco@verizon.net, lparups@verizon.net, mca2175@hotmail.com, HCramer@Risk-Strategies.com, and HankCramer71@gmail.com respectively; and Jeffrey Collier, and Jessica Icerman (Co-counsel for Appellee 6111 Rome LLC) at jcollier@stearnsweaver.com, and jicerman@stearnsweaver.com on this 8 day of July 2024.

/s/ Beth Le

Ruth “Beth” Le, Esq.
Bar No.: 1022454
Environmental Protection Commission
of Hillsborough County
3629 Queen Palm Drive
Tampa, Florida 33619
Telephone: (813) 627-2600
leb@epchc.org
figarij@epchc.org

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

FRANK J. GRECO,

Appellant,

vs.

EPC Case No. 23-EPC-009

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

LINDA PARUPS,

Appellant,

vs.

EPC Case No. 23-EPC-011

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

MICHAEL C. ADDISON,

Appellant,

vs.

EPC Case No. 23-EPC-013

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

_____ /

HENRY CRAMER,

Appellant,

vs.

EPC Case No. 23-EPC-016

**6111 ROME LLC and ENVIRONMENTAL
PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY,**

Appellees.

**APPELLEES 6111 ROME LLC AND ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY'S JOINT RESPONSE
TO APPELLANT FRANK J GRECO'S EXCEPTIONS**

6111 Rome LLC (“6111 Rome”) and the Executive Director of the Environmental Protection Commission of Hillsborough County (“EPC” or “EPC Executive Director”), pursuant to Rule 1-2.35(b), Rules of the EPC, hereby respond to the exceptions served on June 28, 2024, by Appellant Frank J. Greco (Appellant Greco) and states as follows:

Upon due notice, on May 13, 2024, a final evidentiary hearing in the above-captioned matter was held in Tampa, Florida by Thomas A. Thanas, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter “Commission”). The evidentiary hearing was based upon Appellant Greco’s and other appellants’ Consolidated Appeal of the Wetland Impact with Mitigation Plan Authorization #77492 (“Impact Authorization”) executed by the EPC Executive Director (hereinafter “Executive Director”) on November 3, 2023 authorizing the applicant, 6111 Rome, to impact wetlands in Hillsborough County, Florida. The evidentiary hearing included the presentation of six (6) witnesses and the admittance of over 30 exhibits and sub-exhibits.

On June 19, 2024, the Hearing Officer entered a Recommended Order with 42 Findings of Fact and 46 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 the Impact 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 June 28, 2024, the Appellant Greco filed a document that could be considered “Exceptions to the Recommended Order” (“Exceptions”). It appears Appellant Greco’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. Although these Exceptions did not make “specific reference to evidence in the record” as required by Section 1-2.35, and arguably should not be considered by the Commission, they are generally descriptive to provide a response.

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

The Appellant Greco filed exceptions challenging the Findings of Fact in paragraphs 1, 5, 9, 10, 13, 14, 16, 19, 20, 27, 33, and 34 of the Recommended Order.

Findings of Fact 1, 5, 9, and 10 were agreed to by all parties in the Joint Pre-hearing Stipulations dated April 17, 2024 (“JPHS”). As such, the findings are based on competent substantial evidence and shall be affirmed by the Commission.

As it relates to Findings of Fact 13, 14, 16, 19, 20, 27, 33, and 34, EPC witness Abigail Bridges was 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 wetland impact permitting. Chapter 1-11 and the Basis of Review are the governing rules for purposes of determining whether the EPC had reasonable assurance the Impact Permit met the applicable rule criteria. Ms. Bridges acceptance as an expert witness is identified in the record in the May 13, 2024, evidentiary hearing transcript (Transcript) page number 36, lines 7-19.

Ms. Bridges provided expert testimony during the evidentiary hearing that supports the Findings of Fact 13, 14, 16, 19, 20, 27, 33, and 34. Specifically, Ms. Bridges testified as follows:

Finding of Fact 13: Transcript page 41, lines 3-12

Q: So to clarify, which agency established the wetland line for the subject property?

A: That would be SWFWMD, Southwest Florida Water Management District.

Q: Is that line binding on EPC?

A: Yes. That line is binding on EPC per statute. So it's 373.421, which states that a government -- a state agency delineating wetlands using 62-340 methodology, that line is binding on all other government entities.

Finding of Fact 13: Joint Pre-hearing Stipulation, dated April 17, 2024 – Undisputed Fact #14.

14. According to the Southwest Florida Water Management District (SWFWMD) wetland boundary determination, there are two wetlands within the boundary of the Property: Wetland 1 and Wetland 2.

Findings of Fact 14: Transcript pages 42-43

Q: And feel free to reference the Joint Exhibit 3 that you have as needed. So concerns have been raised by the appellants regarding a spring located

in the Stormwater Ditch 1 that you saw -- or Wetland 1 now in the final authorization. While on site, did you see a spring in that wetland proposed for impact?

A: No.

Q: Are springs afforded any special protection under Chapter 1-11?

A: No. All wetlands are protected equally.

Q: Is a spring of a type of wetland?

A: Yes.

Findings of Fact 16: Transcript page 42, lines 1-11

Q: Can you describe that observed wetland?

A: Yes. That wetland was a freshwater forested system. Previously it had been a City of Tampa stormwater ditch that had been rerouted.

Q: You said freshwater forested system. How did you make that determination?

A: I made that determination by observing the plant communities that were on site. There was quite a few invasive, but the native plants that were there would be indicative of a freshwater forested system.

Findings of Fact 19: Transcript page 45, lines 4-11

Q: Was the current zoning provided?

A: Yes.

Q: What was that zoning?

A: RS50.

Q: What is your understanding on what that zoning would allow?

A: That zoning would allow for a high density residential development for the property.

Findings of Fact 20: Transcript pages 46-47

Q: What justification did the applicant provide for reasonable use Factor J?

A: They stated that the impact was necessary for safety reasons because emergency vehicles would need to have a turnabout spot in order to access the units there so they could get in, have an adequate T turnabout and be sure that emergency services had access to those areas.

Transcript page 46, lines 7-14

...

A: So this portion of the wetland impact, it's impacted by the road so the emergency vehicles could make that turnabout and have ingress, egress. So even if we didn't authorize the rest of the system to be impacted, that impact would still be necessary for safety purposes, and it would essentially hydrologically choke off the rest of this wetland causing a secondary impact that they would need to mitigate for.

Transcript page 47, lines 7-15

Findings of Fact 27: Transcript page 57, lines 14-21

Q: What are considered reasonable attempts?

A: So reasonable attempts would be, you know, is the mitigation bank -- do they have credits available? Is it the right type and the right amount of credits available? Is the cost, you know, reasonable because mitigation bank credits can range quite a bit in cost and are almost always very expensive.

Findings of Fact 33: Transcript page 59¹, lines 20-24

Q: So can you describe for us non-science people, what are cumulative impacts?

A: Cumulative impacts are essentially the combined effect of wetland impacts in an area so like how they stack on top of each other.

Findings of Fact 34: Transcript page 59-60

Q: How extensive is your consideration of cumulative impacts?

A: They must be considered. But, you know, to review every single project and every single site past, future present is not required as part of the review.

Transcript page 60, lines 9-14

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) 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). Here, Abigail Bridges provided expert testimony during the

¹ There appears to be a scrivener’s error in Finding of Fact 33. The appropriate Transcript page citation is page 59.

evidentiary hearing which constitutes competent substantial evidence. As such, the Commission has no authority to overturn or modify the Hearing Officer's Finding of Fact paragraphs 13, 14, 16, 19, 20, 27, 33, and 34 because they are based on substantial competent evidence in the record.

Further, it is long standing Florida law that the hearing officer is the fact finder in administrative proceedings. Tedder v. Fla. Parole Comm'n, 842 So.2d 1022, 1025 (Fla. 1st DCA 2003). 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. As identified earlier, there may be conflicting competent substantial evidence, but the hearing officer as the finder of fact weighs the evidence presented and makes findings of fact that can be reasonably inferred. Brindlewood Group Home v. Agency for Persons with Disabilities, 136 So.3d 652, 657 (Fla. 2nd DCA 2013). Appellant Greco is asking the Commission to re-weigh the evidence in the record or to disregard the expert testimony evidence presented during the evidentiary hearing. When a finding of fact is based on expert witness testimony presented during the hearing, constituting competent substantial evidence, the Commission shall not reject, reverse, or modify a Hearing Officer's Finding of Fact, nor shall the Commission reweigh the evidence heard by the trier of fact.

Therefore, 6111 Rome and the EPC Executive Director request the Commission affirm the findings of fact in paragraphs 1, 5, 9, 10, 13, 14, 16, 19, 20, 27, 33, and 34 of the Recommended Order as they are based upon competent substantial evidence agreed to by the parties in the Joint Pre-hearing Stipulations or provided by expert witness testimony in the application of Chapter 1-11, Rules of the EPC and the Basis of Review.

CONCLUSIONS OF LAW
PARAGRAPH 40

The Appellant Greco's exception to Conclusion of Law 40 alleging that testimony provided by Appellants was more than lay testimony based on the Appellants' professional backgrounds does not dispute the Appellants' burden identified in this conclusion of law nor overcome the procedural requirements to render expert opinion testimony. The Hearing Officer's Conclusion of Law in paragraph 40 of the Recommended Order states the following:

40. Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by the Appellees' expert witness regarding "adequate protection" related to cumulative impacts. Specifically, expert witness Abigail Bridges testified that consideration of cumulative impacts was made. Appellants' presentation of evidence was limited to their own lay testimony and did not contradict Appellees' expert witness testimony.

State law requires that after the applicant meets its initial burden, the burden shifts to the objecting party "to present competent substantial evidence, consistent with the allegations of the petition, that the applicant is not entitled to the permit." Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011). This contrary evidence must be of "equivalent quality" to that presented by the applicant in its prima facie case. Florida Dept. of Transp. v. J.W.C. Co., 396 So. 2d 778, 780 (Fla. 1st DCA 1981). The challenger of such a permit has the ultimate burden of persuasion. *See* Section 120.569(2)(p), Florida Statutes. Here, no Appellant at the May 13, 2024, evidentiary hearing was offered and accepted by the Hearing Officer as an expert witness nor did the Appellants present an expert witness on their behalf to rebut the testimony provided by expert witness Abigail Bridges. Merely stating the professional backgrounds of the Appellant(s) without reference to evidence in the record does not change the procedural requirements for their testimony to be accepted as expert witness testimony. As such, Appellant Greco's exception does

not provide any legal dispute that warrants the modification of this conclusion of law.

This Conclusion of Law is based upon the consideration of the facts in the record and the interpretation of the appropriate standard of review, which addresses the preponderance of evidence in the record and the burden on the parties. As such, the Hearing Officer's interpretations of the applicable law in Conclusion of Law 40 is consistent with the record and controlling law. Therefore, 6111 Rome and the EPC Executive Director request the Commission affirm the Conclusion of Law paragraph 40.

Respectfully submitted this 8th day of July 2024.

/s/ Beth Le

Ruth "Beth" Le, Esq.

/s/ Jeffrey Collier

Jeffrey Collier, Esq.

CERTIFICATE OF SERVICE

I CERTIFY that a true electronic copy was furnished to Frank J. Greco, Linda Parups, Michael C. Addison, and Henry Cramer (Appellants) at frgreco@verizon.net, lparups@verizon.net, mca2175@hotmail.com, HCramer@Risk-Strategies.com, and HankCramer71@gmail.com respectively; and Jeffrey Collier, and Jessica Icerman (Co-counsel for Appellee 6111 Rome LLC) at jcollier@stearnsweaver.com, and jicerman@stearnsweaver.com on this 8 day of July 2024.

/s/ Beth Le

Ruth "Beth" Le, Esq.
Bar No.: 1022454
Environmental Protection Commission
of Hillsborough County
3629 Queen Palm Drive
Tampa, Florida 33619
Telephone: (813) 627-2600
leb@epchc.org
figarij@epchc.org



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #9.a.

Date of EPC Meeting: August 15, 2024

Subject: Rule Adoption Public Hearing to consider amendments to the Basis of Review, Chapters III and V, Rules of the EPC

Agenda Section: Public Hearing

Division: Wetlands Division

Recommendation: Approve adoption of rule amendments to Chapters III and V of the “Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands” (BOR) 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 approve or amend a rule. EPC staff drafted proposed amendments to Chapters III and V of the BOR to provide clarity to applicants who wish to obtain authorization for activities in wetlands, to codify current practices, and to amend the rule for consistency with other State and local government agency regulations.

Financial Impact: No financial impact.

List of Attachments: Proposed Amended Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands: Chapters III and V (Draft version dated July 25, 2024)

Background: In 2008, the EPC Commission adopted the “Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands” (BOR). The BOR was adopted by the Commission to expand on how a person can apply for and qualify for certain permits to develop in wetlands and other surface waters. At the regular meeting of the EPC Commission on January 18, 2024, staff informed the Commission that EPC staff were initiating this rulemaking.

Chapter III of the BOR is entitled “Conditions for Issuance or Denial” and includes the criteria for wetland or other surface water impact permits. The proposed amendments focus on addressing cumulative impacts as it relates to adequate protection under subsection 3.3. Cumulative impacts must be considered as described in section 1-11.09(2), Rules of the EPC. To clarify this process and provide consistency with the State’s cumulative impact consideration, the amendments incorporate language from the Florida Department of Environmental Protection (DEP) wetland permitting rules in the DEP’s Applicant’s Handbook.

Chapter V of the BOR is entitled “Miscellaneous Activities in Wetlands” (MAIW) and includes the criteria to qualify for an MAIW permit. As described in the introduction of Chapter V, MAIWs are those activities that constitute development within wetlands or other surface waters that are considered to have a

minor impact on those wetlands or other surface water functions thus qualifying them for a permit under Chapter 1-11 (the EPC Wetlands Rule) and the associated BOR. An MAIW permit does not require traditional wetland mitigation but may have conditions such as replanting and erosion control. Examples of MAIWs include but are not limited to nuisance vegetation control, swimming access, boat ramps, fences, docks, marginal structures, elevated boardwalks, docks, and shoreline stabilization. MAIW activities do not require a cumulative impact consideration as described in Section 1-11.09(2), Rules of the EPC, as such staff have proposed to clarify this in the Chapter V Introduction.

In 2022, the Commission adopted revisions to re-organize a subsection within Section 5.3.5, now titled “Living Shorelines,” that encourage property owners to use environmentally beneficial methods to prevent shoreline erosion. The proposed amendments expand the section to clearly define objectives of living shorelines, incorporate components that may be necessary for a successful design, and modify terms to be more consistent with other governmental agencies. Additionally, amendments are proposed to clarify criteria for seawall replacements.

In 2021, the Commission adopted a new Section 5.4, Exempt Activities which identified activities that are of nominal consequence to the wetland and require little review or have little potential for environmental impacts. To encourage successful Living Shoreline projects, an amendment to allow for maintenance of permitted projects is proposed. To address feedback from the regulated community and similar to existing State exemptions, staff have proposed two additional exemptions to allow for geotechnical investigations and the replacement of existing utility poles.

The proposed rule amendments clarify ongoing practices to afford the applicant a better understanding of the rule criteria, saving time and increasing permitting efficiency. The increased specificity improves and streamlines the process so that applicants will have more detailed guidance on what activities qualify for an MAIW permit or exemption.

Staff have conducted two public workshops with stakeholders to review the proposed amendments and seek feedback. The two workshops were held on June 12 and June 18, 2024. The rule drafts, notice of workshops, and notice of opportunity to send comments were provided via group e-mails, social media postings, and website postings over the past two months. The few comments received during the workshops and written comment period have been considered by staff and staff made minor adjustments to the proposed rule since the workshops.

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 on July 31, 2024. The draft rules were placed on the EPC website for several weeks and the most current draft was updated on July 25, 2024. The notice of this public hearing was also announced at the workshops and posted on the EPC website on July 30, 2024.

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

DRAFT – July 25, 2024

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

BASIS OF REVIEW

For

**AUTHORIZATION OF ACTIVITIES PURSUANT TO
CHAPTER 1-11 - WETLANDS**

CHAPTER 3 REVISION – Section 3.3
CHAPTER 5 REVISION – Sections 5.1, 5.3.5, and 5.4

CHAPTER III - CONDITIONS FOR ISSUANCE OR DENIAL

...

3.3

3.3.1 Adequate Protection: For purposes of Chapter 1-11, adequate protection shall be determined using the provisions available under Section 1-11.09(1). Adequate protection is the review of the proposed adverse impacts to the environmental benefits provided by the wetland or other surface water and how those adverse impacts will be addressed. Typically, ~~adverse impacts~~ will be addressed through mitigation as provided in Section 1-11.08. However, the rule also allows consideration of temporary impacts and nominal wetland impacts which do not require the same mitigation. Temporary impacts are addressed in Section 1-11.09(1)(a). Wetland or other surface water impacts that are of nominal consequence are addressed in Section 1-11.10 as “Miscellaneous Activities in Wetlands” and are addressed under Chapter V below.

3.3.2 Cumulative Impacts: To supplement the criteria regarding cumulative impacts in Section 1-11.09(2), an applicant must provide reasonable assurance that a regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters within the same drainage basin as the regulated activity for which a permit is sought. A cumulative impact analysis approved by the Florida Department of Environmental Protection or the Southwest Florida Water Management District may be accepted by EPC in lieu of the criteria in this section if the wetlands to be impacted and their mitigation proposed to EPC are both equivalent to those addressed in the State’s cumulative impact analysis. The impact on wetlands and other surface waters shall be reviewed by evaluating the following criteria:

(a) If an applicant proposes to mitigate these adverse impacts within the same drainage basin as the proposed impacts, and if the mitigation fully offsets these impacts, then EPC will consider the regulated activity to have no unacceptable cumulative impacts upon wetlands and other surface waters.

(b) If an applicant proposes to mitigate adverse impacts through mitigation physically located outside of the drainage basin where the impacts are proposed, an applicant may demonstrate that such mitigation fully offsets the adverse impacts within the impacted drainage basin (as measured from the impacted drainage basin), based on factors such as connectivity of waters, hydrology, habitat range of affected species, and water quality (generally referred to as “spill over”). If the mitigation fully offsets the impacts (as measured from the impacted drainage basin), and if the functions provided by the proposed out-of-basin-mitigation will “spill over” into the impacted basin, then the EPC will consider the regulated activity to have no unacceptable cumulative impacts upon wetlands and other surface waters.

(c) When adverse impacts to the functions of wetlands and other surface waters, as referenced in paragraphs (a) and (b) above, are not fully offset within the same drainage basin as the impacts, then an applicant must provide reasonable assurance that the proposed activity will not result in unacceptable cumulative impacts to the functions of wetlands and other surface waters, within the same drainage basin, when considered with the following activities:

i. Projects that have wetland impact authorization from the EPC or pending applications for wetland impact authorization from EPC.

ii. Activities that are under review, approved, or vested pursuant to Section 380.06, F.S., or other activities regulated under Part IV of Chapter 373, F.S., which may reasonably be expected to be located within wetlands or other surface waters, in the same drainage basin, based upon the comprehensive plans, adopted pursuant to Chapter 163, F.S., of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations;

iii. Activities that have similar types of impacts (adverse effects) to those that will be caused by the proposed activity and for which those impacts are not fully offset within the drainage basin, shall be considered. Activities are considered to have similar impacts if they affect similar types of water resources and functions, regardless of whether the activities themselves are similar to one another; and

iv. The cumulative impact evaluation is conducted using an assumption that reasonably expected future applications with like impacts will be sought, thus necessitating equitable distribution of acceptable impacts among future applications.

(d) Cumulative impacts are considered unacceptable when the proposed activity, considered in conjunction with the past, present, and future activities as described in section 3.3.2(c), above, would then result in significant adverse impacts to functions of wetlands or other surface waters within the same drainage basin when considering the basin as a whole. This analysis asks the question whether the proposed system, considered in conjunction with past, present, and future activities, would be the proverbial “straw that breaks the camel’s back” regarding the above referenced wetland and other surface water functions in the basin.

(e) Applicants may propose measures such as preservation to prevent cumulative impacts. If unacceptable cumulative impacts are expected to occur, based on an evaluation described above, the applicant may propose additional mitigation measures.

(f) The Drainage Basin Map in Section 10.2.8-4 of the Florida Department of Environmental Protection Environmental Resource Permitting Applicant’s Handbook, Volume I is adopted and incorporated herein.

CHAPTER V - MISCELLANEOUS ACTIVITIES IN WETLANDS

5.1 Introduction

Pursuant to Section 1-11.09(1)(c), Rules of the EPC, Miscellaneous Activities in Wetlands (MAIW) are those activities that constitute development under Section 1-11.02(2)(b) yet are considered to have minor impact on wetland or other surface water functions. Applications for authorization of these types of impacts will be reviewed pursuant to Section 1-11.10, Rules of the EPC. 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. Development authorized under Chapter V does not require a cumulative impact consideration described in Section 1-11.09(2), Rules of the EPC. Mitigation pursuant to Section 1-11.08 is not necessary for activities that qualify under Section 1-11.10, Rules of the EPC but the approval may include conditions to offset adverse impacts, such as replanting to ensure erosion control or ensure the area is properly re-vegetated. A Wetland Impact Review pursuant to Section 1-11.07, Rules of the EPC, shall be required for all proposed activities which do not meet the specified criteria contained herein. The issuance of an MAIW authorization or qualifying for an exemption from an MAIW 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 a property that is not owned or controlled by the applicant. Eligible MAIW impacts include but are not limited to the following activities:

...

5.3.5 Shoreline stabilization

The EPC encourages property owners to plant native vegetation or use other environmentally beneficial methods to prevent shoreline erosion. All applications for shoreline stabilization measures prohibit the filling of wetlands and other surface waters to obtain usable uplands. During construction, all shoreline stabilization activities shall utilize erosion/turbidity control best management practices. Shoreline stabilization activities shall not cause unauthorized fill in wetlands or other surface waters, including but not limited to failed breakwaters, seawalls, or rip rap. Multiple shoreline stabilization activities are allowed on one property.

(1) ~~Native Based Solutions~~ Living Shorelines.

(a) ~~Native~~ **Natural Shoreline.** Proposals to re-grade and re-plant areas of minor erosion ~~may be with native vegetation~~ are reviewed under this section. ~~An application to stabilize an eroding shoreline with native vegetation must~~ and shall meet the following conditions:

- (i) Only native, non-nuisance, vegetation may be planted. All vegetation must be identified by species and elevation in the project drawings.
- (ii) At a minimum, plants shall be spaced on two (2) foot centers.

(iii) The applicant is responsible for removing non-native, nuisance vegetation from the ~~native~~natural shoreline ~~project~~ area.

(iv) Re-grading shall be limited to the amount necessary to correct the erosion and provide an adequate slope for plant recruitment and vegetation.

(v) Biodegradable natural fibers logs or mats, that are secured in place, such as with the use of wooden stakes, may be used if necessary to support the vegetative plantings.

(b) ~~Native~~Hybrid Shoreline, with Minimum Shoreline Hardening ~~Proposals for the protection and stability of shorelines that incorporate vegetation and/or biological components in combination with harder structures (breakwaters, sills, geo-web and similar structures) necessary to reduce wave energy are reviewed under this section.~~ Hybrid Shorelines shall meet all conditions in Section 5.3.5(1)(a), as applicable, in addition to the following, as applicable:

(i) **Clean fill.** Clean fill placed within the planting zone shall be limited to the minimum extent necessary to support the vegetative plantings and the slope shall be no steeper than two ~~horizontal~~horizontal to one vertical.

(ii) **Breakwater.** A breakwater may be installed concurrent with the planting if permanent wave attenuation is required to maintain the shoreline vegetation, provided:

a. For the purposes of this section, a breakwater is defined as a barrier built into a body of water, waterward of the Mean or Ordinary High Water Elevation, to protect the shoreline and littoral zone from the force of waves;

b. The ~~landward toe of the breakwater is within no less than 3 feet of depth of water at the Mean or Ordinary High Water elevation, and~~ located as close to the planting area as necessary to provide protection for the plantings;

c. The breakwater top height shall be at least six inches more than the Mean or Ordinary High Water elevation, ~~and~~At a minimum, the breakwater shall be visibly marked with a two-inch diameter stake(s) which extends one foot above Mean High Water elevation and has reflective marking, unless determined that a navigational marker is not needed;

d. The breakwater is composed predominantly of natural oyster shell cultch (clean and fossilized oyster shell) or other stable, nondegradable materials such as oyster reef, reef balls, boulders, clean concrete rubble, rip rap, rock sills, or triangular concrete forms, as appropriate for the project location. Oyster shell cultch, if used, shall be enclosed in mesh bags having openings of no more than three inches, or securely fixed to matting prior to placement in the water. Oyster bags and mats must be anchored to prevent movement of shell from the project area;

e. If the breakwater consists of natural boulders or clean concrete rubble it shall be a minimum of one foot in diameter, and contain no reinforcing rods or other similar protrusions;

f. The breakwater shall not be placed over, or within three feet (in any direction) of any existing submerged or emergent native vegetation; and

g. The breakwater shall be placed in units so that there is at least one opening measuring at least five feet in width located every 75 linear feet along the breakwater, with a minimum of one opening, to allow the flow of water and the passage of fish and aquatic wildlife.

(iii) **Soil confinement technology.** Soil confinement technology that allows for vegetation growth (e.g. geofabric or geoweb) or similar material used for the stabilization of the slope and facilitates the planting of native plants within the littoral shelf shall meet the following design specifications:

a. Any soil confinement technology shall not extend more than two feet from the waterward most plantings or the minimum extent necessary to facilitate the planting of vegetation;

b. Any soil confinement technology shall extend to or landward of the Mean or Ordinary High Water line;

c. Any soil confinement technology shall not include petroleum-based materials, such as asphalt, or materials which create leachate when in contact with water; and

d. The soil confinement technology shall not be placed on a slope steeper than two ~~horizontal~~horizontal to one vertical along the shoreline. Alternatively, if necessary for site conditions, terraced construction consisting of horizontal ridges in a stepped design may be allowed.

(iv) **Sill.** A sill may be utilized for permanent wave attenuation to maintain the wetland shoreline vegetation, provided:

a. Concurrent native wetland vegetation is planted immediately landward of the sill;

b. The sill shall be constructed parallel to the shoreline;

c. The sill shall be composed of materials that are consistent with Section 5.3.5(1)(b)(ii)(d);

d. The sill shall be located immediately adjacent on the waterward side of the wetland vegetation/littoral area; and

e. The sill shall be constructed below Mean or Ordinary High Water as appropriate to allow hydration of the wetland area landward of the sill structure.

(c) This section does not authorize beach creation, renourishment, or land reclamation activities.

(d) The placement of these activities shall be of nominal consequence to the existing submerged and/or emergent native vegetation.

(e) The living shoreline must be properly maintained in the permitted footprint, which may require periodic repair or replacement of hardened structures including but

not limited to sills, breakwaters, oyster bags, or clean fill after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline.

~~(f)~~(e) An application fee reduction of 50% applies to Living Shorelines (also known as Native Based Solutions), see Chapter 1-6, Rules of the EPC. This fee reduction is solely for ~~Native Based Solutions~~Living Shorelines and if this activity is paired with another activity, the higher fee shall apply.

(2) **Rip Rap Installation.** The use of rip rap revetment may be permitted pursuant to this section for those natural areas that have demonstrated significant, ongoing shoreline erosion where natural shoreline stabilization is not feasible or with already hardened shorelines. An application to install rip rap revetment must meet the following conditions:

(a) Filter fabric shall be installed prior to the placement of rip rap materials along natural shorelines.

(b) The rip rap shall consist only of natural boulders or clean concrete rubble one to three feet in diameter on average, and there are no reinforcing rods or other similar protrusions in the concrete rubble.

(c) The slope of the rip rap shall be no steeper than two horizontal to one vertical from the surface water or face of the hardened shoreline.

(d) Rip rap shall extend waterward no further than necessary for shoreline stabilization or ecological benefit.

(3) **Seawalls.**

(a) An application for the construction of new seawalls under this section requires a demonstration of shoreline erosion that cannot be corrected by means of native vegetation or the use of rip rap, or is required to maintain the integrity of an upland structure(s). A new seawall shall be limited to residential manmade canal systems where existing functioning seawalls exist on both immediately adjacent properties. Any associated filling of wetlands or other surface waters shall be of nominal consequence and the new wall shall follow the contour of the existing shoreline while avoiding native trees.

(b) Proposals for the repair or replacement of seawalls or similar structures within jurisdictional limits, which do not meet the exemption criteria contained in Section 5.4(B)(17), will be reviewed in accordance with the following criteria:

(i) the face of the replacement wall shall be located no greater than 18 inches waterward of the previous wall unless technical documentation is provided demonstrating additional space is required to repair the wall;

(ii) backfilling or regrading shall be limited to only the minimum amount necessary to level the land immediately behind the replacement seawall. If wetlands or other surface waters have developed immediately landward of the seawall or similar structure, no more than 500 square feet of wetland or other surface water area shall be filled;

(iii) the substrate disturbance shall be limited to the minimum necessary for the installation of the replacement seawall; and

(iv) the removal of vegetation, including native trees, shall be limited to the minimum amount necessary and shall be of nominal consequence to the wetlands and other surface waters.

5.4 Exempt Activities

A. The activities meeting the limitations and restrictions below are exempt from EPC Wetlands permitting. However, if located in, on, or over Port Tampa Bay jurisdictional submerged lands, they may be subject to a separate authorization under the chapter 95-488, Laws of Florida and pursuant to any existing Interlocal Agreement, as applicable. These exemptions do not imply exemption from obtaining all proper permits from other governmental agencies.

B. Activities exempt from permitting:

(1) Re-decking of any existing structure.

(2) Installation of two sister pilings on any existing structures.

(3) Replacement of a previously permitted dock, boardwalk, marginal structure, observation platform in the same configuration including the re-decking, replacement of pilings, hardware, and the new installation of new permissible activity within the existing permitted footprint (e.g., new roof over existing decking). If the total area of the structure exceeds 1000 square feet, this exemption does not apply.

(4) Re-nourishment and/or maintenance of previously permitted rip rap and permitted Living Shorelines pursuant to Section 5.3.5(1), provided that it does not extend beyond its previously permitted dimensions.

(5) Installation or replacement of boatlift within an existing slip. The boatlift location must have adequate depth as noted in 5.3.4(4).

(6) Native plantings in wetlands and other surface waters~~along natural shoreline areas~~ that does not involve vegetation removal or re-grading of ~~shoreline~~ the wetland or other surface water.

(a) Plantings are Florida native wetland plants appropriate for the site obtained from commercially-grown stock; and

(b) Biodegradable natural fiber logs or mats that are secured in place, e.g. with the wooden stakes, may be used if necessary to support the vegetative plantings.

(7) Maintenance activities of unpermitted “grandfathered” structures, provided the structure is still functional and substantially intact. Grandfathered structure are those structures constructed on or before May 14, 1985.

(8) Removal of docks, boardwalks, observation platforms, and marginal structures. Removal of a structure may affect grandfathering status.

(9) The repair of existing public concrete bridge pilings through the construction of pile jackets provided the work is conducted in accordance with the piling exemption in Section 62-330.051, F.A.C.

(10) Removal of derelict vessels as defined in section 823.11(1), F.S., by federal, State, and local agencies, provided:

(a) The derelict vessel case has been completed as specified in section 705.103, F.S., and has been entered into the Statewide Derelict Vessel Database maintained by the Florida Fish and Wildlife Conservation Commission;

(b) All work is done in a manner that, to the greatest extent practicable, avoids additional dredging or filling, grounding or dragging of vessels, and damage to submerged resources such as seagrass beds, oyster beds, coral communities, mangroves, other wetlands, and live bottom; and

(c) An absorbent blanket or boom shall be immediately deployed on the surface of the water around the derelict vessel if fuel, oil, or other free-floating pollutants are observed during the work.

(11) Construction, alteration, maintenance, operation, and removal of freshwater fish attractors by the Florida Fish and Wildlife Conservation Commission, U.S. Forest Service, and county and municipal governments, provided:

(a) The material is limited to clean concrete, rock, brush, logs, or trees;

(b) The material is firmly anchored to the bottom of the waterbody;

(c) The size of an individual fish attractor shall be limited to one quarter of an acre in area;

(d) The top of the fish attractor shall be at least three feet below the water surface at expected average low water depth, as determined based on best available information for the waterbody at the specific location of the attractor;

(e) The attractor shall be outside any posted navigational channels and shall not cause a navigational hazard;

(f) No material is placed on or in areas vegetated by native aquatic vegetation; and

(g) The provisions of paragraph 62-330.050(9)(c), F.A.C., also shall apply to protect listed species during the work.

(12) The installation of aids to navigation, including bridge fender piles, "No Wake" and similar regulatory signs, and buoys associated with such aids if marked and authorized by the Florida Fish and Wildlife Conservation Commission in accordance with section 327.40, F.S.

(13) Repair and replacement of pipes or culverts provided:

(a) The pipes or culverts do not exceed the original footprint of the existing pipe or culvert;

(b) The invert elevation shall not be changed;

(c) The pipes or culverts function to discharge or convey stormwater, and are not associated with the repair, replacement, or alteration of a dam, spillway, or appurtenant works; and

(d) This exemption does not imply exemption from obtaining all proper permits from other governmental agencies.

(14) Collection of seagrass, macroalgae, and macrobenthos in accordance with the terms and conditions of a permit or license issued by the Florida Fish and Wildlife Conservation Commission.

(15) Construction, operation, maintenance, and removal of scientific sampling, measurement, and monitoring devices, provided:

(a) the device's purpose is solely to collect scientific or technical data, such as staff gages, tide and current gages, meteorological stations, water recording, biological observation and sampling, and water quality testing and improvement. Parshall flumes and other small weirs installed primarily to record water quantity and velocity are authorized, provided the amount of fill is limited to 25 cubic yards;

(b) the device and any associated structures or fill, such as foundations, anchors, buoys, and lines, is removed to the maximum extent practicable at the end of the data collection or sampling;

(c) the site is restored to pre-construction conditions within 48 hours of completion of use of the device; and

(d) all work is conducted in compliance with subsection 62-330.050(9), F.A.C.

(16) Geotechnical, geophysical, and cultural resource data surveying, mapping, sounding, sampling, and coring associated with beach restoration and nourishment projects and inlet management activities as provided in section 403.813(1)(v), F.S.

(17) The repair or replacement of functional seawalls or similar structures within jurisdictional limits will be reviewed in accordance with the following criteria:

(a) the face of the replacement wall shall be located no greater than 18 inches waterward from the face of the previous wall;

(b) where no removal of non-nuisance trees or no additional filling or dredging of wetlands or other surface waters is necessary for the construction of the wall; and

(c) where wetlands have not developed immediately landward of the seawall or similar structure.

(18) Seawall cap replacement provided the following conditions are met:

(a) limited to flush standard seawall caps with a 6"-8" overhang;

(b) not applicable to cantilever or encapsulating seawall caps; and

(c) not intended for expanded walkway seawall caps.

(19) Installation and repair of water intake lawn irrigation waterlines and closed-loop air conditioning cooling lines laid on the bottoms of waters for an individual private single-family or multi-family residence, provided that the intake diameter is less than six inches, or its hydraulic equivalent.

(20) Maintenance dredging conducted by Port Tampa Bay, provided the work is conducted in accordance with the maintenance dredging exemption in Section 62-330.051, F.A.C.

(21) Removal of floating tussocks in accordance with the following criteria:

- (a) composed of predominantly (over 50%) non-native vegetation;
- (b) where there is no evidence of or observed active bird nesting of Florida listed species of special concern, threatened species, or endangered species;
- (c) disposal of removed vegetation is placed within an acceptable upland area with the property owner's authorization and situated to prevent the return of these materials back into the wetland or other surface waters;
- (d) heavy machinery is prohibited in wetlands for the removal of floating tussocks;
- (e) floating tussocks composed of predominantly native vegetation are not exempt and require authorization, including but not limited to a Miscellaneous Activities in Wetlands authorization;
- (f) if the method of treatment is herbicide control, any herbicides proposed for treatment shall be approved for use in aquatic systems by the Environmental Protection Agency (EPA) and must be applied in accordance with the label directions. The herbicide selected must be of the kind that adheres to the targeted vegetation; and
- (g) tussocks are defined as floating mats of vegetation that float freely in a waterbody and are not rooted in the substrate of the waterbody.

(22) Geotechnical investigations, including soil test borings, standard penetration tests, and other work involving boring, auguring, or drilling for the purposes of collecting geotechnical data in accordance with the following criteria:

- (a) Excavation at each soil boring, auguring, or coring location is limited to no more than one foot in diameter;
- (b) No drilling fluid or dredged material shall be left above grade in a wetland or other surface water;
- (c) Boreholes suspected to have penetrated a confining layer shall be grouted from the bottom up by means of a tremie pipe and the severed materials shall be removed from the wetland or other surface waters;
- (d) Turbidity, sedimentation, and erosion shall be controlled during and after investigations to prevent violations of state water quality standards due to construction related activities;
- (e) Mats comprised of wooden, composite, metal, or other non-earthen construction materials may be used to provide temporary access to the site to maintain or repair structures, as identified above. Mats shall be removed as soon as practicable but no longer than seven days after the passage of equipment or the completion of the work at each location along the alignment of the project; and
- (f) The following are additional criteria applicable to temporary access and staging areas:

(i) No cutting or clearing of native wetland trees having a diameter four inches or greater at breast height;

(ii) The maximum width of the construction access area shall be 15 feet. Areas disturbed for access shall be restored to natural grades within 48 hours after the geotechnical investigation is complete and be allowed to naturally revegetate; and

(iii) Temporary matting and temporary access areas under this exemption shall not be placed in mangroves.

(23) Preservation, restoration, repair, removal, or replacement of the following: an existing communication or utility pole, aerial transmission or distribution lines (less than 230 kV), or the bases and anchoring devices to support utility poles. The exempt activity must be in accordance with the following criteria:

(a) This exemption is limited to single pole structures;

(b) No dredging or filling in wetlands or other surface waters except to remove poles, bases, or anchoring devices and replace them with new ones;

(c) "Anchoring device" shall mean guy wires fastened to the ground, without the need for dredging in wetlands, and "base" shall mean a foundation not exceeding four feet in radius, used to support a utility pole;

(d) The activity must not relocate existing poles or lines more than 10 feet in any direction from their original location;

(e) Mats comprised of wooden, composite, metal, or other non-earthen construction materials may be used to provide temporary access to the site to maintain or repair structures, as identified above. Mats shall be removed as soon as practicable but no longer than seven days after the passage of equipment or the completion of the work at each location along the alignment of the project;

(f) The following are additional criteria applicable to temporary access and staging areas:

(i) No cutting or clearing of native wetland trees having a diameter four inches or greater at breast height;

(ii) The maximum width of the construction access area shall be 15 feet. Areas disturbed for access shall be restored to natural grades within 48 hours after the electrical facilities work is complete and be allowed to naturally revegetate; and

(iii) Temporary matting and temporary access areas under this exemption shall not be placed in mangroves.

(g) Notwithstanding the above, activities certified under the Power Plant Siting Act or Transmission Line Siting Act pursuant to sections 403.501 - 403.518, F.S. and sections 403.52 - 403.4365, F.S. respectively, are exempt from regulation under this rule.

C. Conditions applicable to all exemptions:

(1) Structures are not used for storage of materials other than those associated with water dependent recreational use.

(2) All work is done in a manner that avoids scouring, dredging or filling, grounding or dragging of vessels and damage to resources.

(3) No dredging, filling, clearing or scouring shall be allowed except for the installation of pilings.

(4) Construction materials, debris, or other trash will not be allowed to escape into the water, at any time during or after construction. Such materials are to be disposed of in an approved manner, i.e., upland disposal facility, appropriate trash receptacles, etc.

(5) This exemption does not convey to the party or create 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 party, or convey any rights or privileges other than those specified in this exempt activity and Chapter 1-11 or other applicable rules.

(6) These activities shall include best management practices for erosion, turbidity and other pollution control to prevent violations of State or EPC water quality standards.

(7) 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.

(8) These activities shall not cause offsite adverse impacts, including flooding, or otherwise affect the local hydrology so as to adversely affect other wetlands.

(9) These exemptions do not provide EPC approval for any other EPC permitting program. In addition, exempt activities pursuant to this rule does not imply exemption from obtaining all proper permits from other governmental agencies.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 10.a.

Date of EPC Meeting: August 15, 2024

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 available at 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, the Commission receives a performance evaluation form (attached). In addition to the attached form, 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 by September 30th to Elaine S. DeLeeuw, Administration Director. The results will be compiled and available at the EPC Commission meeting on October 17, 2024.



PERFORMANCE EVALUATION

Janet D. Lorton, Executive Director
 Environmental Protection Commission of Hillsborough County
October 1, 2023 to September 30, 2024

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*) :